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German Ship Cases

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. [illegible] RAIMUND M. HERMS COMPANY, APPELLANT, v. THE UNITED STATES

No. [illegible] THE FIRM OF M. HERMS AND M. ET AL., APPELLANTS, v. THE UNITED STATES

No. [illegible] HAMBURG-AMERICAN LINE TERMINAL & NAVIGATION COMPANY, APPELLANT, v. THE UNITED STATES

No. [illegible] HAMBURG-AMERICAN LINE TERMINAL & NAVIGATION COMPANY, APPELLANT, v. THE UNITED STATES

No. [illegible] ATLAS LINE SUBSIDIARY COMPANY, APPELLANT, v. THE UNITED STATES

No. [illegible] ATLAS LINE SUBSIDIARY COMPANY, APPELLANT, v. THE UNITED STATES

No. [illegible] NORTH GERMAN LLOYD, APPELLANT, v. THE UNITED STATES

No. [illegible] NORTH GERMAN LLOYD, APPELLANT, v. THE UNITED STATES

No. [illegible] NORTH GERMAN LLOYD, APPELLANT, v. THE UNITED STATES

No. [illegible] HAMBURG AMERIKANISCHE PACKETFAHRT ACTIEN GESELLSCHAFT (ALSO KNOWN AS HAMBURG-AMERICAN LINE), APPELLANT, v. THE UNITED STATES

No. [illegible] HAMBURG AMERIKANISCHE PACKETFAHRT ACTIEN GESELLSCHAFT (ALSO KNOWN AS HAMBURG-AMERICAN LINE), APPELLANT, v. THE UNITED STATES

No. [illegible] DEUTSCHE AUSTRALISCHE DAMPFSCHIFFS-GESELLSCHAFT, APPELLANT, v. THE UNITED STATES

APPEALS FROM THE COURT OF CLAIMS

BRIEFS FOR THE UNITED STATES

WASHINGTON: GOVERNMENT PRINTING OFFICE, 1925

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 102

RHEDEREI M. JEBSEN COMPANY, APPELLANT

v.

THE UNITED STATES

No. 103

THE FIRM OF M. JEBSEN, ETC., ET AL., APPELLANTS

v.

THE UNITED STATES

APPEALS FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION IN THE COURT BELOW

The Court of Claims filed a memorandum opinion in the *Rhederei M. Jebsen Company* case (59 Ct. Cls. 402; R. 6) applying its opinion in the case of *Deutsch-Australische Dampfschiff-Gesell-*

schaft, Appellant, v. *The United States* (No. 126, October Term, 1925), which opinion is reported in 59 Ct. Cls. 450.

GROUNDS OF JURISDICTION

The judgment to be reviewed, bearing date March 17, 1924, appears at R. 6. By it the Court of Claims sustained a demurrer to the plaintiff's petition and dismissed the petition. Appeal was allowed May 19, 1924 (R. 13), under Sections 242 and 243, Judicial Code (Act of March 3, 1911, Chap. 231, 36 Stat. 1087, 1157).

STATEMENT

A stipulation is on file that No. 103 shall abide the result in No. 102.

Recovery was sought in this case (No. 102) for the value of an enemy-owned steamship, the title to which was taken over by the United States on June 30, 1917, and also for the value of the use of the steamship from April 6, 1917, the date when the United States took possession of the vessel, until June 30, 1917, the date when title was taken over.

The petition alleged that the Rhederei M. Jebsen Company was at the time of the seizure of its vessel a corporation organized under the laws of Schleswig-Holstein, Germany; that after the war it became a Danish corporation through the annexation by Denmark of Schleswig-Holstein; that on the declaration of war by the United States

against Germany, or within a few days thereafter, the steamship *Joiasse*, belonging to the appellant and then in the harbor at Manila, " was seized, held and prevented from fully departing by the United States Government, by its officers and agents," and " held and used by said Government until the title was taken over as hereinafter alleged." The petition further alleges that on June 30, 1917, the title of the vessel was taken by the United States by order of the President pursuant to the Joint Resolution of May 12, 1917, and recovery was asked upon an implied contract to pay compensation for the value of the ship at the time of taking of title, June 30, 1917, and for the value of its use from the time possession was taken by the United States until title was taken. (R. 1-3.)

JOINT RESOLUTION

The Resolution of May 12, 1917 (Chap. 13, 40 Stat. 75), is as follows:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or

in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

SEC. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation.

ARGUMENT

Summary

I. The vessel was enemy owned and the United States had the right of a belligerent to confiscate it.

II. The Fifth Amendment, forbidding the taking of private property for public use without compensation, does not protect enemy property from confiscation.

III. The power to decide whether enemy property should be taken with or without compensation, and to

select the tribunal to award any compensation which may be allowed, rests with Congress; and the question here is whether Congress intended that compensation should be paid.

IV. That Congress, when authorizing the taking of these vessels, deliberately postponed decision on the matter of compensation is established by the following considerations:

(a) There is nothing in the terms of the Joint Resolution from which intent to compensate may be implied.

(b) Because an intent is implied to compensate citizens for their interest, it does not follow that a similar intent is to be implied in the case of enemies.

(c) The fact that the United States has advocated the policy of exempting private property of enemies from confiscation is not, under the circumstances of this case, sufficient to raise an implication of intention to pay compensation.

(d) The legislative history of the Joint Resolution of May 12, 1917, points irresistibly to the conclusion that Congress intended to postpone consideration of the question of compensation.

(e) Other legislation shows the policy of Congress to postpone until after the war decision on the matter of compensation for the private property of enemies seized during the war.

(f) The reason which gives rise to an implied promise to pay for property protected by the Fifth Amendment has no application to property taken under the belligerent right to seize and confiscate.

V. The seizure of the vessel at the outbreak of hostilities and prior to the passage of the Joint Resolution was merely preliminary to taking of title and to prevent the escape of the vessel, and does not give rise to an implied contract to pay for the temporary use or possession.

VI. Conclusion.

I

The United States has the right to confiscate the property of an enemy

The vessel was the property of an enemy and the United States had the right, if it chose to assert it, to confiscate it.

> That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but can not impair the right itself. [*Brown* v. *United States*, 8 Cranch, 110, 122, 123.]

II

The Fifth Amendment does not protect private enemy property from confiscation

It is settled that the Fifth Amendment to the Constitution of the United States, providing that the United States shall not take private property for public use without compensation, does not operate to restrict the war power nor protect the property of an enemy from confiscation. *Miller* v. *United States*, 11 Wall. 268. There the Court said (pp. 304, 305):

> But if the assumption of the plaintiff in error is not well made, if the statutes were not enacted under the municipal power of Congress to legislate for the punishment of crimes against the sovereignty of the United

States, if, on the contrary, they are an exercise of the war powers of the government, it is clear they are not affected by the restrictions imposed by the fifth and sixth amendments. This we understand to have been conceded in the argument. The question, therefore, is, whether the action of Congress was a legitimate exercise of the war power. The Constitution confers upon Congress expressly power to declare war, grant letters of marque and reprisal, and make rules respecting captures on land and water. Upon the exercise of these powers no restrictions are imposed. Of course the power to declare war involves the power to prosecute it by all means and in any manner in which war may be legitimately prosecuted. It therefore includes the right to seize and confiscate all property of an enemy and to dispose of it at the will of the captor. This is and always has been an undoubted belligerent right.

III

The power to decide whether compensation shall be paid rests with Congress, and the question is whether Congress intended that compensation should be paid

The provision of the Constitution (Article I, Section 8) giving Congress power to declare war and to make rules for captures on land and water places in Congress the power and duty to decide whether enemy property, if seized, shall be taken with or without compensation. *Ware* v. *Hylton*, 3 Dall. 199; *Brown* v. *United States*, 8 Cranch, 110.

The question in this case is whether Congress intended compensation should be paid. There is also the question whether the Court of Claims has been given jurisdiction to entertain the claim, but the two questions are so interwoven that the answers must be the same.

There are no statutes specifically authorizing the Court of Claims to consider this claim. If it has jurisdiction, it must be under the general statute to hear claims "founded upon the Constitution of the United States or any law of Congress," or "upon any contract, express or implied, with the Government of the United States." (Section 145, Judicial Code; Act of March 3, 1911, chap. 231, 36 Stat. 1087, 1136.)

The claim is not founded on the Constitution, as the Fifth Amendment has no application.

There is no "law of Congress" specifically authorizing payment. Consequently the jurisdiction, if it exists, must rest upon the theory that the circumstances of the taking imply an intent or contract on the part of the United States to pay compensation. An implied contract to pay involves an implied intent to pay, so that, in the last analysis, whether the case turns on the question of the jurisdiction of the Court of Claims or on the question whether the national will has been exercised in favor of paying compensation, the ultimate inquiry is whether an intent to pay for these vessels is to be implied.

IV

Congress when authorizing the taking deliberately postponed decision on the matter of compensation

The argument of the appellant proceeds on the assumption that it was necessary for Congress at the time it decided to authorize the taking of the ships to then finally decide whether compensation should be paid. On this assumption it is argued that, for various reasons, Congress could not have intended to confiscate and must, consequently, have intended to pay compensation.

The more reasonable conclusion is that Congress at the time of authorizing the taking deliberately postponed decision as to compensation, which, of course, amounted to a decision that no compensation should be paid until further consideration of the subject was given and action taken by Congress.

That Congress deliberately postponed decision on this subject is established by the considerations set forth below.

(a) The terms of the Joint Resolution

There is nothing in the terms of the Joint Resolution from which an intent to pay may be implied. The Resolution authorized the seizure of ships owned in whole or in part by enemies. If owned in part by enemies and in part by citizens of the United States, the seizure of the enemy interest would be by virtue of the belligerent right to confiscate, and the seizure of the citizen's in-

terest would be under the power of eminent domain and entitle the citizen to compensation. The Resolution did not use the terms "confiscate" or "requisition." The use of one would have been inappropriate as to the interests of citizens of the United States, and the use of the other would have been inappropriate as to the interests of enemies. Congress used the broader expression "take over," which was appropriate whether or not compensation was to be made. If an inference is to be drawn from the use of this phrase, it is either that Congress intended the confiscation of enemy ships and the requisition with compensation of friendly interests, or, what is more probable, intended to postpone decision as to whether there should be confiscation or compensation to enemies.

Section 2 of the Resolution authorized an appraisal of the property and a preservation of the report of the appraisers, and made it prima facie evidence "in all proceedings on any claim for compensation." The appellant contends that this shows an intention to pay compensation. The Court of Claims answered this contention by the plausible suggestion that the section was intended to perpetuate evidence of condition and value for future use in case Congress ultimately decided to compensate enemy owners.

The provision for obtaining and preserving evidence of condition and value finds a further explanation on the face of the Resolution, which

authorized the taking of vessels in which citizens held a share, the taking of which would involve liability for compensation under the Fifth Amendment, and therefore raise an implied contract to immediately pay it, so that the provision for collecting evidence as to value and the reference to proceedings on any claim for compensation may be accounted for as intended to cover those cases in which the United States might be immediately liable to pay compensation to citizens, as well as intended to cover the case of enemy interests, in the event that Congress should ultimately decide to compensate enemy owners.

(b) An intent to compensate enemies is not to be implied because an intent to compensate citizens is implied

The appellant contends that inasmuch as the Resolution authorized the taking of ships in which citizens owned a share, an obligation or implied contract to pay citizens arose under the Fifth Amendment, and that Congress must therefore have intended the same results for enemy interests.

The main purpose of the Resolution was the seizure of enemy-owned vessels. The taking of vessels in which citizens had an interest was merely incidental, and it does not appear that the power of seizure was exercised with respect to any ship in which both enemies and citizens were owners. That an obligation would arise to pay for shares in such vessels owned by citizens is conceded. In the case of citizens' interests such an

obligation would arise because of the application of the Fifth Amendment, but the contention that the same result was intended for enemy interests—although not protected by the Fifth Amendment—involves the presumption that Congress must have intended to treat the enemies of the United States as its friends, a supposition obviously without reasonable basis.

(c) The fact that the United States has advocated the policy of exempting private property of enemies from confiscation is not sufficient basis for implying an intent to pay compensation

In a further effort to support the claim of an implied intention or contract to pay, the appellant reviews the attitude of the United States on the question of confiscation of privately owned enemy property found within a belligerent jurisdiction at the outbreak of war, showing that in dealing with this subject the nation and its public officials and statesmen have favored what Chief Justice Marshall spoke of as "the humane and wise policy of modern times," and opposed the practice of confiscating such interests. From this it is argued that Congress could not have intended to violate these precepts, and therefore an intent should be imputed to it to provide compensation.

It is true that the United States has consistently advocated this policy, but the policy has not yet been translated into law in the form of a treaty or statute.

The circumstances attending the declaration of war by the United States on April 6, 1917, and the

passage of the Joint Resolution authorizing the seizure of enemy-owned ships were unusual. In 1917 ships were as important implements of war as guns. Germany had been sinking merchant ships in violation of accepted rules of international law. The manner in which merchant vessels of neutrals and of her enemies had been destroyed by Germany was an important factor in leading us into the conflict, and the shortage in merchant tonnage that made the seizure of these vessels necessary resulted largely from Germany's destruction of merchant ships in violation of accepted rules of international law. Furthermore, to award compensation on the basis of the market value of the vessels at the time of the seizure would be to pay the German owners a fancy price in excess of cost and in excess of what it would cost to build and in excess of the prospective value of the vessels at the close of the war, when the vessels would again have become available for use by German owners, thus involving payment of an excessive price, resulting largely from Germany's own violation of international rules of conduct.

There was no reason at the time of authorizing the taking of the ships to decide the question of compensation, as German owners could not themselves have collected the compensation before the end of the war. There was also in mind the question what Germany would do by way of paying for the destruction of American merchant vessels sunk before the United States declared war, or

what she would do with respect to the payment of claims of American citizens for the illegal destruction of lives and property, and the question whether the United States should pay for vessels seized if later they should be sunk by German submarines. Many of these considerations were advanced in the debates in Congress as justifying postponement of decision with respect to matters of compensation.

These considerations and others which might be mentioned show that Congress might well have refrained from decision as to compensation and postponed consideration of the question whether any compensation should be paid and what should be the basis of compensation, and what commission or tribunal should act as the agency awarding it, if it should ultimately be decided to pay compensation.

(d) The legislative history of the Joint Resolution confirms the conclusion that Congress intended to postpone consideration of the matter of compensation for enemy property

Extensive extracts from the Journals of the House and Senate showing the legislative history of the Resolution of May 12, 1917, are found in the appendix to this brief.

When introduced in the Senate the Resolution provided that claims for compensation should be determined at the end of the war. In committee this was stricken out, and when reported to the Senate the Resolution contained elaborate provisions respecting compensation, including provision

that in the case of enemy interests the Court of Claims was authorized to report the facts back to Congress but not to award compensation. Debate followed, in which objection was made to making any present provision for compensation to enemies. The statement was made:

> On the question as to whether the owners of these vessels should be paid the value of the vessels, I think it is a question that ought to be determined in the future. The German Government sank our ships on the high seas when we were a neutral power, and I have heard nothing to indicate that they are prepared to pay American citizens for the sinking of those ships the value of those ships; and when we have German vessels in our hands, as far as I am concerned, I am not disposed to pay the citizens of Germany the value of that property until they are prepared to pay our citizens the value of the property they have destroyed. [Cong. Rec., 65th Cong., 1st Sess., vol. 55, pt. 2, pp. 1572, 1573.]

As a result of this debate, the Resolution was amended by striking out all the sections dealing with compensation, the plain purpose being to postpone decision on that subject.

The extracts from the debates in the House of Representatives cited by appellant demonstrate the wisdom of the rule that individual expressions of opinion by members of Congress are not reliable guides to the intention of the majority.

Taken as a whole, the material from the Congressional Record found in the appendix to this brief leads irresistibly to the conclusion that Congress deliberately refused to make any immediate provision for compensation and left open for future consideration the question whether and under what conditions compensation should be paid to enemies for these vessels.

(e) Other legislation shows the policy of Congress to postpone for future consideration the matter of compensation for enemy property

The Trading with the Enemy Act, passed after the Resolution of May 12, 1917, authorized the seizure of enemy property of kinds not so directly useful for war purposes as vessels, and postponed decision as to whether the property should be returned to the owners or whether the enemy owners should be compensated. (Act of October 6, 1917, Chap. 106, 40 Stat. 411.)

(f) The reasons which give rise to an implied contract to pay for property protected by the Fifth Amendment have no application to property taken from enemies

An intent to pay, and consequently a promise or contract to pay, for property taken for public use has been implied in cases where the owners were protected by the Fifth Amendment, because of the constitutional obligation to pay.

United States v. *Great Falls Mfg. Co.*, 112 U. S. 645.
Schillinger v. *United States*, 155 U. S. 163.
Bigby v. *United States*, 188 U. S. 400.
Tempel v. *United States*, 248 U. S. 121.

In *United States* v. *Buffalo Pitts Co.*, 234 U. S. 228, the Court said (pp. 235, 236):

> When it takes property under such circumstances for an authorized governmental use it impliedly promises to pay therefor. This accords with the principles declared in the previous cases in this court and *arises because of the constitutional obligation embodied in the Fifth Amendment to the Constitution of the United States,* guaranteeing the owner of property against its appropriation for a governmental use without compensation. [Italics ours.]

An intent or contract to pay for enemy property seized under the war power has never been implied in any adjudicated case in the United States.

Juragua Iron Co. v. *United States,* 212 U. S. 297.
Herrera v. *United States,* 222 U. S. 558.
Hijo v. *United States,* 194 U. S. 315.
Castelo v. *United States,* 51 Ct. Cls. 221.

This Court has often held that the taking of property by the United States under a claim of ownership is no basis for implying an intent to pay compensation because the assertion of the right to take property as its own is an assertion of the right to take property without paying anything for it and negatives any intent to pay. A case where the United States seizes property under the war power with the right to take the property without any compensation is analogous, because in

the latter case the Government, in taking, is asserting a right to take without payment.

It is doubted whether a *contract* to pay exists even though there be a declared intention to pay for seized enemy property, because the Government in such case has the absolute right to take without compensation, and payment of compensation is a mere gratuity or bounty based only on a sense of justice and fairness.

V

As no implied promise arose to pay for the taking of the title, there is no reason to imply an intent to pay for temporary possession

While the main question is whether an implied contract arose to pay the value of the ship taken pursuant to the Joint Resolution of May 12, 1917, it is also urged by the appellant that an intent is to be implied to pay for the use of the vessel prior to the time the title was taken. Possession was taken immediately on the outbreak of the war, April 6, 1917. For all that appears from the petition the seizure of the vessel at the outbreak of hostilities was merely preliminary to the ultimate taking of the title and to prevent its removal or injury until such time as formal authority could be obtained from Congress to take over the title. If this was the purpose of the seizure or possession, there would be no reason to imply any intent to pay for this temporary use or possession if there was no intent to pay the value on the taking

of title. No statute is cited by appellant giving authority to seize the vessel prior to the passage of the Joint Resolution of May 12, 1917. This preliminary seizure or possession may, however, be said to have been authorized by the Act of August 29, 1916 (Chap. 418, 39 Stat. 619, 645), which provided that—

> The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

There is nothing in the terms of the Act of August 29, 1916, to show that Congress intended to surrender the right of a belligerent to seize enemy property without compensation. This subject is more fully dealt with in the brief in No. 112, *North German Lloyd, Appellant,* v. *The United States.* No intent or contract to pay compensation for the use before acquisition of the title is to be implied from the circumstances of the taking.

CONCLUSION

The correct rule, deducible from the trend of judicial decisions and legislative treatment of this subject, and applicable to this and similar cases, is

that when property of an enemy is seized by the United States under the war power, and with the admitted belligerent right of confiscation, a court should not award compensation to the enemy owners unless Congress, in the exercise of its exclusive power to declare the national will with respect to captures of enemy property, has expressly or by *necessary* implication directed that compensation should be paid, fixed the measure of it, and appointed the court as the agency for making the award. There was in the present case no express direction by Congress to pay compensation to enemy owners, and there was nothing in the Joint Resolution or the circumstances attending its passage from which an intent to compensate, or to direct the courts to award compensation, is necesssarily implied.

Applied to the present case, these principles should result in an affirmance of the judgment of the court below.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

OCTOBER, 1925.

No. 108. HAMBURG-AMERICAN LINE TERMINAL & NAVIGATION COMPANY, APPELLANT, v. THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 108

HAMBURG-AMERICAN LINE TERMINAL & NAVIGATION Company, Appellant

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION IN THE COURT BELOW

The memorandum opinion of the Court of Claims, adopting the opinion in the case of *Deutsch-Australische Dampfschiffs-Gesellschaft, Appellant,* v. *The United States* (No. 126, October Term, 1925), is reported in 59 Ct. Cls. 461, and is found at page 12 of the Record.

GROUNDS OF JURISDICTION

The judgment to be reviewed was entered by the Court of Claims March 17, 1924 (R. 12), sustaining a demurrer to and dismissing the petition.

Appeal was allowed June 16, 1924 (R. 20), under Sections 242 and 243, Judicial Code.

STATEMENT

In this case recovery is sought by a New Jersey corporation, all of the stock of which was owned by an enemy corporation, for the value of the use of piers and terminal properties, possession of which was taken and held by the United States for the period from April 6, 1917, to June 28, 1918, for which it is alleged no compensation has ever been paid. Recovery is also sought for interest on the amount of an award of compensation for the taking of the title from the date of acquisition of title by the United States, June 28, 1918, to the date of payment of the award, January 5, 1919. The most important question in the case is whether a domestic corporation, all of whose stock is owned by an enemy corporation, is entitled to the same treatment as a citizen, or whether its property is properly considered enemy property.

The petition in this case alleged that plaintiff was and is a New Jersey corporation organized in 1899 (R. 1), and that it is and always has been a subsidiary of the Hamburg-American Line, a German corporation, and that all of its issued stock is and always has been owned by the Hamburg-American Line (R. 1); that the outstanding shares of stock of the terminal company held by the Hamburg-American Line were in December, 1917, seized and taken over by the Alien Property Cus-

todian under the Trading with the Enemy Act, and that the present officers and directors of the terminal company were placed in office through the voting power of the Alien Property Custodian (R. 1–2). It is alleged that the terminal company owned wharves, docks, and piers in Hoboken; that on April 6, 1917, the United States entered upon this property, and on April 20, 1917, made its entry exclusive by ejecting the terminal company, and from April 20, 1917, until the United States acquired title to the property on June 28, 1918, the Secretary of War, under the direction of the President and pursuant to the Act of August 29, 1916, retained its use and possession. (R. 2.) The petition further alleges the acquisition of title to the property by the United States on June 28, 1918, by proclamation of the President under the Act of March 28, 1918, and the award of compensation of the value as of June 28, 1918, and the payment of that compensation on January 5, 1919. (R. 2–3.) It is alleged that no compensation for the use of the property was paid for the period from April 6, 1917, to June 28, 1918. (R. 3.) There is no allegation that the award by the President of December 3, 1918, did not include interest from June 28th to December 3d. (R. 3.) As to the amount found as the value on June 28th (R. 3), the petition assumes, without any allegation to that effect, that the compensation awarded by the President was the value as of June 28th, and was without

any allowance for the delay in payment of the award. The relief sought is the value of the *use* from April 6, 1917, to June 28, 1918, and interest on the amount awarded for the *title* to the property for the period from June 28th, the date of the taking, to January 5, 1919, the date of the payment of the award. (R. 4.)

THE STATUTE

The Act of August 29, 1916, under which the possession was held prior to the taking of title, is quoted at length on page 66 in the brief in No. 112. The Act of March 28, 1918, authorizing the taking of title to this property, and the proclamations of June 28, 1918, taking the title, and of December 3, 1918, awarding compensation, are found in the brief in No. 112 on pages 67–72. The proclamations in question dealt with the property of the North German Lloyd Dock Company and of the Hamburg-American Line Terminal & Navigation Company. Schedule A, attached to the proclamation of December 3, 1918, contains the following (40 Stat. 1914, 1916):

> To the Hamburg-American Line Terminal & Navigation Company, a corporation of the State of New Jersey, the sum of two million three hundred fourteen thousand eight hundred and seventy-seven dollars ($2,314,877), to be paid to said Hamburg-American Line Terminal & Navigation Company upon the satisfaction of record of all liens by way of mortgage, judgment or otherwise existing

on, and all taxes and assessments due and exigible upon the foregoing premises, or any part thereof, on the 28th day of June, 1918.

THE QUESTIONS

One question is whether the docks and piers belonging to a New Jersey corporation whose stock was owned by an enemy were enemy property or whether the claimant is entitled to the same treatment as a citizen and to compensation on an implied contract for the value of the use of the property from April 6, 1917, to June 28, 1918.

The other question is whether compensation awarded by the President for the taking of title to the property was adequate and just compensation, and if not, whether any officer or tribunal other than the President has power to make an award or correct the award made by the President.

ARGUMENT

Summary

I. Congress has adopted the policy of determining the status of corporations as enemy or not without regard to the nationality of their stockholders, and the United States admits error in the decision of the Court of Claims in so far as it held that the property of a New Jersey corporation was enemy owned because all its stock was enemy owned.

II. As the appellant is to be dealt with as a citizen of the United States, notwithstanding its stock was enemy owned, then upon the taking of the use of its property a contract to pay just compensation for that use was implied.

III. With respect to the claim for compensation for the use of the property from April 6, 1917, to the date

title was taken, June 28, 1918, an implied contract to pay compensation is admitted.

IV. The claim for interest on the award of compensation for the taking of the title must fail because there is nothing on the face of the award or in the petition to indicate that any item of just compensation was omitted.

V. Conclusion. The United States concedes that the judgment should be reversed and compensation awarded for the use of the property from April 6, 1917, to June 28, 1918.

I

The property of a New Jersey corporation was not enemy owned because all its shares of stock were enemy owned

The important fact in this case is that the property in question belonged to a New Jersey corporation all of the outstanding stock of which was owned by an enemy corporation, and at the outset the question arises whether the property of the New Jersey corporation was enemy owned and subject to confiscation or whether the corporation was entitled to the protection of the Fifth Amendment as a citizen, or whether, at least, *it was intended by Congress that it should be accorded the same treatment as a citizen.*

The Government contended in the court below that the property of the New Jersey corporation should be treated as the property of an enemy because all the issued stock of the New Jersey corporation belonged to an enemy corporation. The Court of Claims evidently accepted this view, and in a brief memorandum opinion (R. 12) bases its

decision on the opinion in No. 126, *Deutsch-Australische Dampfschiffs-Gesellschaft* v. *The United States,* which involves property admittedly owned by an enemy. The authorities cited by the Government below in support of this view are certain English prize cases.

In the case of the *St. Tudno,* Lloyd's Reports of Prize Cases, Vol. V, p. 198, the following appears:

> A steamship [the *St. Tudno*] of which the registered owners were a British company, was before the war used as a tender at Southampton to the vessels of the Hamburg-Amerika Linie. She had been bought in 1912 by the Hamburg-Amerika Linie, who caused her to be transferred to the British company, by whom she was in form chartered for five years to the Hamburg-Amerika Linie. All the shareholders were nominees of the Hamburg-Amerika Linie, who appointed the directors, gave them their qualifications, and took from them blank transfers of their qualifying shares, and an agreement to conform to the instructions of the Hamburg-Amerika Linie and account to the latter for all dividends. Soon after the outbreak of war the vessel was requisitioned as a British ship by the Admiralty, in whose employment she was at the time of seizure.
>
> *Held* that even if all the circumstances had been known to the Admiralty (which they were not), the fact that she was under requisition was immaterial, that the beneficial ownership was vested in the Ham-

burg-Amerika Linie, and that she must be regarded as enemy property * * *. [Pp. 198–199.]

The court, speaking through the President, says:

> In this case the Crown asks for the condemnation of a paddle steamer, the *Saint Tudno,* which up to the time of the outbreak of war between this country and Germany, was at all material times used as a tender in or about Southampton for the liners of the Hamburg-Amerika Linie. The claim of the Crown is grounded on the contention that this steamer was enemy property, and that is the question which I have to determine in this case.
>
> * * * * *
>
> The steamship belonged nominally to a British company registered in this country. In my opinion, in this Court of Prize, I have a right to look, and am bound to look, at something beyond the nominal ownership. The British company had, I think, three British directors and some British shareholders; but the documents which are now before me show clearly what the position of those directors, as directors, was, and what the position of those gentlemen as shareholders was. [Pp. 204–205.]
>
> * * * * *
>
> Now, apart from technicalities, could anybody say that this ship belonged to a British company? If it did in name belong to a British company, that covering was the

> merest thinnest shell, and I must break through it, as I do break through it, in order to ascertain who the real owners of the ship were. There can be no doubt that the real owners are the Hamburg-Amerika Linie; and if the ship earned during the period of war (as it has earned up till now) considerable sums, all those sums would have to be accounted for to that enemy company. [Pp. 207–208.]

The same doctrine is stated in the case of the *Michigan* (Lloyd's Reports of Prize Cases, Vol. V, p. 421):

> All the shares in a company registered in Great Britain were held by a German corporation, except six registered in the names of the directors and secretary of the company, all German subjects, and of a French employee of the corporation, resident before the war in Germany.
>
> *Held* that goods belonging to the British company were liable to be condemned as enemy property.

The judgment concludes with the following words (p. 423):

> I hold that this company for all purposes affecting this case must be regarded as an enemy company, although carrying on business here, and the property must be condemned as enemy property.

In the case of *Daimler Company (Limited)* v. *Continental Tyre and Rubber Company (Great*

Britain) (*Limited*), decided in the House of Lords June 30, 1916, 2 A. C. (1916) 307 (Times Law Reports, Vol. XXXII, pp. 624, 626), Lord Halsbury uses the following language (p. 316):

> The limited liability was a very useful introduction into our system, and there was no reason why foreigners should not, while dealing honestly with us, partake of the benefits of that institution, but it seems to me too monstrous to suppose that for an unlawful, because, after a declaration of war, a hostile, purpose the forms of that institution should be used, and enemies of the State, while actually at war with us, be allowed to continue trading and actually to sue for their profits in trade in an English Court of justice.

I do not feel able to support the propositions announced in these English cases as decisive of this case. It is not necessary to go as far as to cast any doubt on the power of Congress to provide that property of a domestic corporation shall be treated as enemy owned where all of the stock of the domestic corporation is owned by an enemy. Where, however, Congress has not seen fit to adopt the policy of treating the property of domestic corporations as the property of enemies, though all of the stock of the corporations be owned by enemies, and has evidenced an intention that the property of such corporations shall be dealt with as the property of citizens, it would cause great

confusion if the courts should disregard this method of treatment and adopt a different rule.

For very practical reasons and to avoid confusion in the application of laws dealing with enemy property, Congress has adopted the policy of treating the property of domestic corporations as not enemy property, without regard to enemy ownership of its stock, and has preferred the method of seizing the shares of stock as enemy owned rather than treating the property of the corporation as enemy owned.

The Joint Resolution of May 12, 1917, which authorized the President to take over the title of vessels "owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war," dealt with corporations and established, as the test of enemy ownership in the case of property owned by corporations, the fact that the corporation was a corporation of a nation with which the United States was at war. In the Trading with the Enemy Act, approved October 6, 1917, chap. 106 (40 Stat. 411), in Section 2, subdivision (a), an enemy was defined as including "any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory."

In *Behn, Meyer & Co.* v. *Miller,* 266 U. S. 457, the Court held that under that Act the status of a

corporation was not fixed by the nationality of its stockholders, and said (p. 472):

> Before its passage the original Trading with the Enemy Act was considered in the light of difficulties certain to follow disregard of corporate identity and efforts to fix the status of corporations as enemy or not according to the nationality of stockholders. These had been plainly indicated by the diverse opinions in *Daimler Co.* v. *Continental Tyre & Rubber Co.*, 2 A. C. [1916] 307 * * *.

The Act of March 28, 1918 (Chap. 28, 40 Stat. 459), and the Proclamations of the President under it, by virtue of which the title to this dock property was taken, proceed on the theory that the domestic corporations were not enemies and their property was not enemy owned, regardless of the fact that all of the issued stock of the domestic corporations was enemy owned. In dealing with corporations Congress definitely adopted the policy of disregarding stock ownership as a test of enemy character, and in dealing with domestic corporations, whose stock was owned by enemies of the United States, has proceeded on this theory and it has been the enemy-owned stock which has been seized, and in this very case it appears from the petition that the stock of the terminal company formerly owned by the Hamburg-American Line, an enemy corporation, was seized by the Alien Property Custodian in December, 1917. (R. 1.)

II

Notwithstanding the corporation's shares were enemy owned, an implied contract arose to pay just compensation for the use of its property

Even though Congress has power to treat as enemy property, unprotected by the Fifth Amendment, the property of a domestic corporation because of enemy ownership of *all* of its stock, if it has chosen not to do so and has shown an intention that such corporations should not be treated as enemies, then it must be conceded that in the taking of the use of the property of such a corporation under the Act of August 29, 1916, an intent, and consequently a contract, may be implied to pay compensation for that use, and the taking in such a case should raise the same implications as to compensation as if the property were in fact protected by the Fifth Amendment. The implication of an intent or contract to pay compensation in such a case may not be based on the fact that the ownership of the property is actually protected by the Fifth Amendment, but on the evident intent of Congress that the owner should be treated as if his property were protected by the Fifth Amendment.

III

An implied contract is admitted to pay for the use of the property of a New Jersey corporation taken under the Act of August 29, 1916

With respect, therefore, to the claim for value of the use of the property from April 6, 1917, to

June 28, 1918, a use taken on the authority of the Act of August 29, 1916, if the corporation is to be treated as a citizen and not as an enemy, an intent or contract to pay the value of the use of the property during that period would be implied, and as there is an allegation that no compensation was paid for that use the petition, in this view of the case, stated a cause of action. The Act of March 28, 1918, authorizing the taking of the titles to docks and piers, is not susceptible of the interpretation that it authorized compensation for anything more than was taken under it and subsequent to its passage.

IV

The claim for interest on the award must be rejected

With respect to interest on the amount of the award from June 28th, 1918, the date of taking the title, to January 5, 1919, the date of the payment, there is nothing to show that in determining compensation the President did not take into account the delay, past and prospective, in making payment, or that he did not make the amount of the award sufficient to cover the use of the money from the date of the taking to the date of payment. The award on its face does not show that any item necessarily a part of just compensation was omitted, and the petition does not allege that there was any omission, nor does it state any facts to justify the

assertion that the amount of the award was the value as of June 28th without any addition for the use of the money after that date, or for the delay in payment.

CONCLUSION

While the petition does not state a cause of action for interest on the award, it does state a cause of action for the reasonable value of the use of the pier property prior to the taking of title on the theory that the claimant corporation was entitled to the same treatment as a citizen. If the Court agrees with the court below and the English cases on this subject, the judgment should be affirmed; but if the views expressed in this brief are adopted, the judgment should be reversed.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

OCTOBER, 1925.

No. 109. HAMBURG-AMERICAN LINE TERMINAL & NAVIGATION CO., APPELLANT, v. THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 109

HAMBURG-AMERICAN LINE TERMINAL & NAVIGATION Company, Appellant

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION IN THE COURT BELOW

The memorandum opinion of the Court of Claims, adopting the opinion in *Deutsch-Australische Dampfschiffs-Gesellschaft* v. *The United States* (No. 126), is found at page 12 of the Record and is reported in 59 Ct. Cls. 461.

GROUNDS OF JURISDICTION

The judgment to be reviewed, entered March 17, 1924, by the Court of Claims, appears at R. 12. By it the Court of Claims sustained a demurrer to the petition and dismissed it. Appeal was allowed June 16, 1924 (R. 20), under Sections 242 and 243, Judicial Code.

STATEMENT

Recovery in this case is sought for the value of tugs, barges, and other craft, possession and control of which (but not title) were taken by the United States on April 17, 1917, under authority of the Act of August 29, 1916. The case is like No. 108, *Hamburg-American Line Terminal & Navigation Company* v. *The United States*, in that the claimant was and is a New Jersey corporation all of whose outstanding shares of stock at the time of the seizure complained of were owned by the Hamburg-American Line, a German company, the stock having in December, 1917, been acquired by the Alien Property Custodian. (R. 1.) The authority for the seizure is the Act of August 29, 1916 (R. 3), authorizing the President to take over the possession and use of, but not the title to, transportation systems. The claimant alleges the value of the property at the time of taking and asks judgment for the value, but makes no allegation as to the value of the *use*, and the prayer for relief does not ask for the value of the use.

ARGUMENT

Summary

I. The appellant, a New Jersey corporation, is to be treated as a citizen and not as an enemy, although all its stock was enemy owned.

II. For whatever interest in its property was taken for public use an implied contract to pay compensation is admitted.

III. The petition shows that only the possession and control of its property were taken, not the title or full ownership, and the Act of August 29, 1916, under which it is alleged possession was taken, authorized only the taking of temporary possession and use and not complete ownership.

IV. The petition therefore states a cause of action only for recovery of the value of the use.

V. It is admitted that the judgment should be reversed.

Admitting, as in No. 108, that the terminal company, a New Jersey corporation, is to be treated as a citizen and not as an enemy, and that from the taking of its property by the United States an intent or contract is to be implied to pay compensation, and that the same implications arose in favor of the company as arise on the taking of the property of a citizen for public use, it would follow that for the *use* of any property taken from this corporation under authority of the Act of August 29, 1916, an implied promise arose to pay compensation. The Act of August 29, 1916, is, according to the petition, the statute under which officials of the United States took possession of these vessels.

The Act authorized the President to "take possession and assume control" of any system of transportation, or part thereof, and "to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon" for certain purposes. There is nothing in the Act authorizing the taking of title, and under it the right to hold possession ended on the termination of the war.

All that ought to have been taken, or could have been taken, under this Act was possession and use, and not entire ownership. While the petition alleges that on April 6, 1917, the property was "requisitioned or commandeered" (R. 3), it goes on to say with more particularity that on April 17, 1917, it was turned over to the Depot Quartermaster Corps, the Secretary of War, "upon directions from the President, pursuant to the Act of Congress of August 29, 1916," having ordered that the Depot Quartermaster should take "possession and assume control thereof." The Joint Resolution of May 12, 1917, authorized taking over title only of vessels in whole or in part enemy owned. The petition therefore stated no cause of action for compensation for the taking of the title, but only for the value of the use.

The petition does not state the value of the use, and thus states a cause of action for recovery of only nominal compensation; but as a just claim for compensation for use is pleaded, judgment should be reversed if the Court adopts the view expressed in this brief and in the brief in No. 108, that the claimant is entitled to the same treatment as a citizen. If the view announced in the English cases and by the court below is adopted, the judgment should be affirmed.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

OCTOBER, 1925.

No. 110. ATLAS LINE STEAMSHIP COMPANY, APPELLANT, v. THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 110

ATLAS LINE STEAMSHIP COMPANY, APPELLANT

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION IN THE COURT BELOW

The memorandum opinion of the Court of Claims, adopting the opinion in the *Deutsch-Australische Dampfschiffs-Gesellschaft case* (No. 126) is found at R. 12, and is reported in 59 Ct. Cls. 974.

GROUNDS OF JURISDICTION

The judgment to be reviewed was entered March 17, 1924. (R. 12.) By it the Court of Claims sustained a demurrer to and dismissed the petition. Appeal was allowed June 16, 1924 (R. 19), under Sections 242 and 243, Judicial Code.

STATEMENT

The Atlas Line Steamship Company was and is a New Jersey corporation, all of its outstanding

shares of stock being owned by the Hamburg-American Line, a German corporation, until the stock was taken by the Alien Property Custodian in December, 1917. (R. 1.) Recovery in this case is sought for the value of three barges which it is alleged the United States took possession of in April, 1917, under direction of the President pursuant to the Act of August 29, 1916, and the title to which it is alleged the United States acquired on June 30, 1917, under authority of the Joint Resolution of May 12, 1917. (R. 2.) The relief prayed for is judgment for the value in April, 1917, plus interest on that value.

The barges had been the property of the Atlas Company since 1913. (R. 2.) The Atlas Company had been a subsidiary of the Hamburg-American Line for many years. It is alleged in the petition that on April 6, 1917, the United States, by the Treasury Department, acting through customs officers, "requisitioned" the barges (R. 2), and on April 16, 1917, the Secretary of War, "upon directions from the President, pursuant to the Act of Congress of August 29, 1916," ordered the Depot Quartermaster to "take possession and assume control thereof," and on June 30, 1917, by Executive Order pursuant to the Joint Resolution of May 12, 1917, the title was taken over by the United States. It appears that the taking of possession occurred on April 16, 1917. Recovery is sought for the value of the

barges as of April 6, 1917, and interest thereon until paid.

ARGUMENT

Summary

I. The appellant, a New Jersey corporation, is to be considered a citizen and its property not enemy property, although its shares of stock were enemy owned.

II. The Act of August 29, 1916, under which possession of the barges was taken, authorized taking possession and use, but not title and ownership.

III. The Joint Resolution of May 12, 1917, authorized the taking of title only of vessels owned in whole or in part by enemies.

IV. The petition therefore states a cause of action, but only for the value of the possession and use.

V. The United States concedes that the judgment should be reversed to allow recovery of the value of the use.

If the position taken in No. 108 is correct, the Atlas Company is to be considered a citizen and its property not enemy property, and on that basis an intent or contract could be implied to pay for whatever property was taken by the United States under authority of law. Recovery is sought for the value of the property, on the theory that the title and ownership were taken by the United States. The Act of August 29, 1916, did not authorize any official of the United States to take title, but only the use during the war of transportation systems or parts thereof. The Joint Resolution of May 12, 1917, authorizing the taking of vessels limited the authority to those owned in whole or in part by enemies or flying the enemy flag or under enemy register. As these barges be-

longed to a domestic company, there was no authority under the Joint Resolution of May 12, 1917, for taking over title and ownership. With respect to vessels owned by corporations, the Joint Resolution of May 12, 1917, expressly limited the authority granted to the taking of vessels owned by "corporations of any nations with which the United States may be at war." No statutory authority has been pointed out for the taking of the title, and if such a taking of title was attempted it was unauthorized and ineffective, and constituted a tort of which the Court of Claims has no jurisdiction. (Section 145, Judicial Code.) The taking of possession and use during the war seems to have been authorized by the Act of August 29, 1916, and the petition seems to state a cause of action on an implied contract to pay the reasonable value of the use of the barges—at least until the end of the war—and although the value of that use is not alleged and a recovery on the basis of this petition might be limited to one cent, that is a situation curable by amendment.

If the Court agrees with the position taken in the brief in No. 108, that this domestic corporation is entitled to the same treatment as a citizen in the matter of compensation for its property taken for public use, the judgment should be reversed.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

OCTOBER, 1925.

No. 111. ATLAS LINE STEAMSHIP COMPANY, APPELLANT, v. THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 111

ATLAS LINE STEAMSHIP COMPANY, APPELLANT

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION IN THE COURT BELOW

The memorandum opinion of the Court of Claims, adopting the opinion in the *Deutsch-Australische Dampfschiffs-Gesellschaft case* (No. 126), is found at R. 16, and is reported in 59 Ct. Cls. 461.

GROUNDS OF JURISDICTION

The judgment to be reviewed was entered March 17, 1924. (R. 16.) By it the Court of Claims sustained a demurrer to and dismissed the petition. An appeal was allowed June 16, 1924 (R. 23), under authority of Sections 242 and 243, Judicial Code.

STATEMENT

The claimant, the Atlas Line Steamship Company, is a New Jersey corporation all of the outstanding stock of which since its organization in 1903 was owned by the Hamburg-American Line, a German corporation, until the stock was seized by the Alien Property Custodian in December, 1917. The suit is for the value of five vessels, title to which was taken by the United States, one by an Executive Order of May 22, 1917, and four by Executive Order of June 30, 1917, under authority of the Joint Resolution of May 12, 1917, authorizing the seizure of vessels owned by enemies, or flying the enemy flag, or under enemy register. The case differs radically from those heretofore considered (Nos. 108, 109, 110) in that prior to April 2, 1917, these vessels belonged to the Hamburg-American Line, a German corporation, and were then and continued to be until their seizure under German registry. On April 2, 1917, a month after diplomatic relations between the United States and Germany were severed, and only four days before the formal declaration of war, and when it was common knowledge that war was inevitable, the parent company, the Hamburg-American Line, executed and delivered to the New Jersey corporation, the Atlas Line Steamship Company, a bill of sale to the vessels for a recited consideration of $2,250,000, which was represented by a promissory note for that amount

given by the subsidiary and payable in one year, and secured by a chattel mortgage on the vessels. *The registry of the vessels was not changed.* (R. 2.)

The statute involved is the Joint Resolution of May 12, 1917, quoted at length in the brief in No. 102, at page 3.

THE QUESTIONS

The questions involved are whether the vessels were enemy owned or had the status of enemy vessels at the time of seizure, and if so, whether there was any implied contract to pay compensation.

ARGUMENT

Summary

I. The ships remained under German flag and registry, and therefore had the status of enemy vessels, without regard to the nationality of the owner.

II. The Joint Resolution of May 12, 1917, authorized the seizure of vessels flying the enemy flag or under enemy registry.

III. For the reasons disclosed in the brief in No. 102, Rhederei M. Jebsen Company v. The United States, no implied contract arose to pay compensation for enemy vessels seized under the Joint Resolution of May 12, 1917.

IV. An additional reason for considering these vessels to be enemy owned is found in the colorable and fictitious character of the sale from a German corporation to an American corporation (a subsidiary of the German corporation) four days before the declaration of war.

If these vessels had been under American flag and registry at the time of seizure and had been,

as in No. 110, the property of the Atlas Company, a New Jersey corporation, acquired and held in good faith long before the outbreak of the war, it might be concluded, as in No. 110, that the Atlas Company would be entitled to the same treatment as a citizen owner, notwithstanding it was a subsidiary of and all its stock was owned by an enemy corporation. The case differs, however, from No. 110 in two important respects: First, the ships remained under German registry; second, the facts alleged raise a presumption that the transfer from the Hamburg-American Line to the Atlas Company was not a transfer in good faith but a colorable arrangement, leaving the German corporation the beneficial owner. The fact that the vessels remained under German flag and German registry left them with the status of enemy vessels subject to seizure and confiscation as enemy property without regard to actual ownership.

That registry of vessels may be made the test of nationality is established.

Oppenheim, Int. Law, I, page 317, says:

> All States with a maritime flag are by the Law of Nations obliged to make private vessels sailing under their flags carry on board so-called ship papers—

and among them is—

> An official voucher authorizing the vessel to sail under its flag. This voucher consists of a Certificate of Registry, etc.

In *The Mohawk*, 3 Wall. 566, 571, it was said:

> The purpose of a register is to declare the nationality of a vessel engaged in trade with foreign nations, and to enable her to assert that nationality wherever found.

The Joint Resolution of May 12, 1917, authorized the seizure of vessels "flying the flag" or "under register" of any nation with which the United States was at war.

Notwithstanding these ships may not have been eligible to registry under the laws of the United States, although owned by a citizen of the United States, Congress was following a recognized rule of international law in making registry the test of nationality.

This proposition alone disposes of the case, with the application of the principles contended for in the brief in No. 102, *Rhederei M. Jebsen Company* v. *The United States*.

An additional reason for affirming the judgment is found in the fact that the transfer was colorable. While the case was decided on demurrer to the petition, and although the petition alleges in one place that the vessels were owned by the Atlas Company at the time of seizure, the details of the transaction by which that alleged ownership was acquired are stated in the complaint and they give rise to the presumption that the sale was a colorable one and the German company remained the real owner. If the case had been tried and

the evidence coincided with the allegations in the complaint with respect to the circumstances of the acquisition of ownership, the court would have been bound to find as a matter of law that the sale was a sham. Sales by enemies to neutrals *flagrante bello* are "severely scrutinized" and "liable to great suspicion."

In the case of *The Benito Estenger*, 176 U. S. 568, at page 578, this Court, quoting from Hall, International Law (4th ed.), 525, said:

> "In England and the United States, on the contrary, the right to purchase vessels is in principle admitted, they being in themselves legitimate objects of trade as fully as any other kind of merchandise, but the opportunities of fraud being great, the circumstances attending a sale are severely scrutinized, and the transfer is not held to be good if it is subjected to any condition or even tacit understanding by which the vendor keeps an interest in the vessel or its profits, a control over it, a power of revocation, or a right to its restoration at the conclusion of the war."

The same principles are applicable to the case of a transfer from a prospective enemy to a citizen on the eve of war, when its declaration is commonly understood to be inevitable. In the case of *Stoehr* v. *Wallace*, 255 U. S. 239, the matter involved was the sale of enemy-owned shares in a corporation to an American citizen, which sale was

made on February 20, 1917, and in contemplation of war and to avoid its consequences. The Court said (at page 251):

> The District Court, after reviewing the proofs at length, concluded that the contract was not prompted by commercial motives, nor based on an estimate of mutual advantages, and was not intended as a genuine business transaction, but was made to avoid inconveniences which otherwise might ensue from a state of war; and that the parties intended to leave the beneficial ownership in the German corporation and not to pass it to the New York corporation. We reach the same conclusion. On no other theory can the acts of those who were concerned be explained or their declarations reconciled. The mere recitation of the facts makes this so plain that we refrain from any special discussion of them.

In the present case the pretended sale occurred four days before the declaration of war, and when war was inevitable. The price stated was $2,250,000—$1,540,000 less than the value of the vessels as alleged in the petition and for which recovery is sought. Not one cent of the purchase price was paid, but a promissory note for the full amount, due in one year, was given. The Atlas Company evidently had no liquid resources sufficient to finance the purchase, as a chattel mortgage was taken on the vessels to secure the purchase price.

No reason whatever appears for the transaction except the purpose to prevent seizure on the outbreak of war. Through its ownership of all of the stock in the Atlas Company and its complete control of that company, the vendor had, with respect to each of these vessels, the "power of revocation, or a right to its restoration at the conclusion of the war," to use the language approved by this Court in *The Benito Estenger case.*

The property being subject to seizure and confiscation as enemy property, the case is disposed of on the principles applied in the case of *Rhederei M. Jebsen Company* v. *The United States,* No. 102. There being no intent or contract implied to pay compensation to enemy interests seized under the authority of the Joint Resolution of May 12, 1917, the judgment should be affirmed.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

OCTOBER, 1925.

No. 112. NORTH GERMAN LLOYD, APPELLANT, v. THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 112

NORTH GERMAN LLOYD, APPELLANT

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION IN THE COURT BELOW

The memorandum opinion of the Court of Claims, adopting the opinion in the *Deutsch-Australische Dampfschiffs-Gesellschaft case* (No. 126), is found at R. 5, and reported in 59 Ct. Cls. 460.

GROUNDS OF JURISDICTION

The judgment to be reviewed was entered March 17, 1924 (R. 5). By it the Court of Claims sustained a demurrer to and dismissed the petition. Appeal was allowed June 16, 1924 (R. 13), under Sections 242 and 243, Judicial Code.

STATEMENT

In this case recovery is sought by the enemy lessee of certain docks, piers, and warehouses at Hoboken, for the value of the use of the property from April 6, 1917, until June 28, 1918, during which period the United States is alleged to have held possession, June 28th being the date as of which the United States acquired title to the property under the Act of March 28, 1918. Recovery is also sought for the value of the use of the premises from June 28, 1918, the date as of which title was acquired by the United States, until December 3, 1918, the date on which the award of compensation for the title was made, or, in lieu thereof, for interest on the award for that period.

The North German Lloyd Dock Company, a New Jersey corporation, had no interest in the possession of the property, having leased it to the German corporation, and the Dock Company was awarded $1.00 for its reversion, with which it appears to be satisfied, as it is not here claiming additional compensation.

The petition alleges that the North German Lloyd was and is a German corporation; that the North German Lloyd Dock Company was and is a New Jersey corporation (R. 1) all of the stock of which was during the periods mentioned in the petition owned by the German corporation (R. 2); that in 1900 the German corporation being then the owner of certain lands on the Hudson

River in the City of Hoboken, New Jersey, conveyed the lands to the New Jersey corporation, which built piers and warehouses thereon, $2,000,000 of the cost of which was provided by mortgage made by the Dock Company and the remainder by funds advanced by North German Lloyd, the German corporation; that in March, 1903, the Dock Company leased the lands and piers to the German corporation for a term of 999 years; that on April 6, 1917, the property was entered upon by the military forces of the United States, without, however, excluding claimant; that on April 20, 1917, possession was seized by the United States under the Act of August 29, 1916, authorizing the President in time of war to take possession of transportation systems (R. 2); that on June 28, 1918, the title and ownership were taken over by the United States by proclamation of the President pursuant to the Act of March 28, 1918, which specifically authorized the acquisition of terminal properties and docks of the North German Lloyd Dock Company and directed that compensation be paid (R. 3); that on December 3, 1918, the United States, acting through the President and under authority of the Act of March 28, 1918, "awarded compensation for the title of said premises and property by it expropriated as aforesaid." It is then alleged that no compensation has been awarded "for the use of said premises and property from the date of the original taking of possession and use thereof by the United States of

America, namely, April 6, 1917, to the date that the same was expropriated and title thereto taken by the United States of America, namely, June 28, 1918; nor for the period from the last-mentioned date to the date of the award of compensation for the taking of title, namely, December 3, 1918." Then follow allegations as to the reasonable value of the use of the premises from April 6, 1917, to June 28, 1918, and from June 28, 1918, to December 3, 1918, with a prayer for relief asking for value of the use from April 6, 1917, to June 28, 1918, and also for the period from June 28, 1918, to December 3, 1918, or, if the value of the use for the last-mentioned period be not awarded, then for interest for that period on the sum awarded December 3, 1918, as compensation for the taking of title (R. 3).

STATUTES AND PROCLAMATIONS

The statute under which possession was taken and held from April 6, 1917, to June 28, 1918, is the Act of August 29, 1916, chap. 418 (39 Stat. 619, 645), which is as follows:

> The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes con-

nected with the emergency as may be needful or desirable.

The Act of March 28, 1918, chap. 28 (40 Stat. 459), authorizing the expropriation of title to this dock property, is quoted in two proclamations of the President, one expropriating title and the other awarding compensation for the title. The first proclamation, dated June 28, 1918 (40 Stat. 1804), is as follows:

> *Whereas* the Act of Congress making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses and for other purposes, approved March 28, 1918 (Public—No. 109—65th Congress), contains the following provisions:
>
> "The President is authorized to acquire the title to the docks, piers, warehouses, wharves, and terminal equipment and facilities on the Hudson River now owned by the North German Lloyd Dock Company and the Hamburg-American Line Terminal and Navigation Company, two corporations of the State of New Jersey, if he shall deem it necessary for the national security and defense: *Provided,* That if such property can not be procured by purchase, then the President is authorized and empowered to take over for the United States the immediate possession and title thereof. If any such property shall be taken over as aforesaid, the United States shall make just

compensation therefor to be determined by the President. Upon the taking over of said property by the President, as aforesaid, the title to all such property so taken over shall immediately vest in the United States: *Provided further,* That section three hundred and fifty-five of the Revised Statutes of the United States shall not apply to any expenditures herein or hereafter authorized in connection with the property acquired."

Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me by the said Act of Congress approved March 28, 1918, do hereby determine and declare that the acquisition of title to the foregoing docks, piers, warehouses, wharves, and terminal equipment and facilities, is necessary for the National security and defense, and I do hereby take over for the United States of America the immediate possession and title thereof, including all leaseholds, easements, rights of way, riparian rights and other rights, estates and interests therein or appurtenant thereto.

Just compensation for the property hereby taken over will be hereafter determined and paid.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia this twenty-eighth day of June, one thousand

nine hundred and eighteen, and of the Independence of the United States, one hundred and forty-two.

WOODROW WILSON.

By the President:
ROBERT LANSING,
Secretary of State.

The second proclamation, awarding compensation, dated December 3, 1918 (40 Stat. 1914), is as follows:

Whereas the Act of Congress making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses and for other purposes, approved March 28, 1918 (Public—No. 109—65th Congress), contains the following provisions:

"The President is authorized to acquire the title to the docks, piers, warehouses, wharves, and terminals equipment and facilities on the Hudson River now owned by the North German Lloyd Dock Company and the Hamburg-American Line Terminal and Navigation Company, two corporations of the State of New Jersey, if he shall deem it necessary for the national security and defense: *Provided,* That if such property can not be procured by purchase, then the President is authorized and empowered to take over for the United States the immediate possession and title thereof. If any such property shall be taken over as afore-

said, the United States shall make just compensation therefor to be determined by the President. Upon the taking over of said property by the President, as aforesaid, the title to all such property so taken over shall immediately vest in the United States: *Provided further,* That section three hundred and fifty-five of the Revised Statutes of the United States shall not apply to any expenditures herein or hereafter authorized in connection with the property acquired";

And whereas, pursuant to the authority vested in the President by said Act of Congress, approved March 28, 1918, the President by a proclamation duly made on the 28th day of June, 1918, determined and declared that the acquisition of title to the foregoing docks, piers, warehouses, wharves, and terminal equipment and facilities was necessary for the national security and defense, and did thereby take over for the United States of America the immediate possession and title thereof, including all leaseholds, easements, rights of way, riparian rights and other rights, estates and interests therein or appurtenant thereto; a more particular description of which said property is set forth in the schedule marked A hereto annexed;

And whereas, pursuant to the authority vested in the President by said Act of Congress, approved March 28, 1918, it was in and by said proclamation of June 28, 1918, expressed and declared that just com-

pensation for the property thereby taken over would be thereafter determined and paid:

Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me by the said Act of Congress, approved March 28, 1918, do hereby determine and declare that the just compensation for the property in and by said proclamation of June 28, 1918, expropriated for the United States of America is the sum of seven million, one hundred and forty-six thousand, five hundred eighty-three dollars ($7,146,583); and I do hereby order and direct that compensation for the same, aggregating said amount of $7,146,583, be made out of the money appropriated by the act approved December 15, 1917, entitled "An Act Making appropriations to supply deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," continuing and making available until June thirtieth, nineteen hundred and eighteen, the appropriation of $100,000,000 "for the national security and defense, and for each and every purpose connected therewith, to be expended at the discretion of the President," contained in the general deficiency appropriation Act approved April seventeenth, nineteen hundred and seventeen, to the parties and in the amounts set forth in the schedule marked A, hereto annexed; any part of the sum to be paid for

which that appropriation does not suffice to be paid out of the similar appropriation for the fiscal year 1919.

And I do hereby further order, direct, and require under the authority delegated to me by Section 6, subsection c, of the trading with the enemy Act, approved October 6, 1917, that the sum of money specified in said schedule which I determined to be payable to the North German Lloyd, a corporation of the Free and Hanseatic City of Bremen in the German Empire, be paid over to the Alien Property Custodian appointed under the provisions of said trading with the enemy Act, the same to be held by him subject to the provisions of said act.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia, this third day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States the one hundred and forty-third.

WOODROW WILSON.

By the President,
ROBERT LANSING,
Secretary of State.

The schedule awarding compensation to the North German Lloyd, after describing the property, provides (40 Stat. 1918):

To the North German Lloyd Dock Company, a corporation of the State of New

Jersey, in respect of its reversion, the sum of one dollar ($1.00).

To the North German Lloyd, a corporation of the Free and Hanseatic City of Bremen in the German Empire, $4,831,705 less $47,500, interest paid to the said Prudential Life Insurance Company of America on account of the obligation of said North German Lloyd, namely, four million seven hundred and eighty-four thousand, two hundred five dollars ($4,784,205), to be paid to A. Mitchell Palmer, Alien Property Custodian, appointed under the provisions of the Trading with the Enemy Act, the same to be held by him subject to the provisions of said Act, as directed in the foregoing and annexed proclamation, said sum of $4,784,205 to be chargeable with the payment and satisfaction of all liens, by way of mortgage, judgment or otherwise, existing on, and all taxes and assessments due and exigible on, the foregoing premises or any part thereof, on the 28th day of June, 1918.

QUESTIONS INVOLVED

The first question is whether the taking possession by the United States under the Act of August 29, 1916, chap. 418, 39 Stat. 619, 645, of transportation facilities or systems belonging to enemies gave rise to an implied contract to pay compensation to the enemy.

The second question is whether the award of compensation for the title, authorized by the Act of March 28, 1918, chap. 28, 40 Stat. 459, was

complete and adequate, and if not, whether, under that Act, any officer or tribunal other than the President has power to award additional compensation, and whether, if any claim exists for additional compensation, it has been sequestered under the Trading with the Enemy Act.

ARGUMENT

Summary

I. No implied contract arose to pay compensation for the use prior to the taking of title. The leasehold estate was enemy owned. The possession and control of the docks were taken and held, prior to the taking of title, under authority of the Act of August 29, 1916. There is nothing in that Act from which an intent can be implied to pay compensation for enemy interests.

II. The claim for the value of the use after the taking of title or for interest on the award fails for the following reasons:

(a) The use belonged to the United States after the taking of title, and there is nothing to show that the award by the President did not take into account delay in payment.

(b) The Act of March 28, 1918, designated the President to determine the compensation, and withheld power to award compensation from the Court of Claims.

(c) The enemy-owned claim for the value of the leasehold estate was sequestered by the President under the Trading with the Enemy Act, and the claimant, the former enemy owner, does not own the claim.

I

There was no implied contract to pay for the use of the property for the period prior to taking of title

It will be noted that suit was instituted, not by the Dock Company, a New Jersey corporation,

which was the owner of the fee, but by the North German Lloyd, a German corporation, holder of the leasehold estate and an enemy at the time of the seizure.

The seizure of the possession and use of these properties for the period from April 6, 1917, to the date of taking of the title, June 28, 1918, must have been under authority of the Act of August 29, 1916. No other statute is suggested as authority for the taking of possession of this property.

The Act of August 29, 1916, is a war measure. It relates to transportation systems owned by citizens of the United States as well as those which may be owned by enemies. It makes no provision for compensation. With respect to the seizure under that Act of interests of citizens, protected by the Fifth Amendment, it may be conceded there was an implied intent or contract to pay compensation. A different situation exists with respect to the interests of enemies.

It has been shown in the brief in No. 102, *Rhederei M. Jebsen Company* v. *The United States*, that enemy property found within the country at the outbreak of the war may be confiscated, and that Congress is vested with the power and duty to deal with captures on land and decide whether compensation shall be paid, and if so, to select the tribunal to award it, and that no intent or contract to pay compensation for seized enemy property will be held to exist unless expressed or necessarily implied.

These principles dispose of the first claim for the value of the use of the property prior to the taking of title. There is nothing in the Act of August 29, 1916, expressly authorizing compensation, and there is nothing in the Act from which the implication is necessary that Congress intended in case of seizure of enemy property to waive the belligerent right of confiscation or make any immediate decision as to whether the enemy should be compensated, and there is nothing in the Act to suggest the selection by Congress of any tribunal to award compensation to enemies. If the claimant is to receive compensation for the use of its property for the period from April 6, 1917, to June 28, 1918, it can only be after further action by Congress.

The case of *Brown* v. *United States*, 8 Cranch, 110, cited by the appellant, held that a declaration of war alone was not sufficient authority for confiscation of enemy property, but to authorize confiscation there must be some legislation in addition to the declaration of war. In the present case we do not rely on the declaration of war as the legislative authority for the seizure of possession. The requirement of the *Brown case* was fulfilled here, authority for the seizure being found in the Act of August 29, 1916. It is true that Act said nothing about confiscation, but it did authorize the seizure of possession and control, and as no intent to pay compensation was expressed or necessarily implied its effect was to authorize seizure of pos-

session of enemy property without compensation until further action by Congress. In the *Brown* case there was no statute authorizing the seizure.

II

The claim for the value of the use after the taking of title, or for interest on the award is without basis

The second claim, for value of the use after the date title was taken or for interest on the amount of the award, may be defeated on any one of several grounds. The Act of March 28, 1918, expressly authorizes the purchase or expropriation of the piers, wharves, and terminal properties "now owned by the North German Lloyd Dock Company," a New Jersey corporation, provided that in case of expropriation "the United States shall make just compensation therefor to be determined by the President."

(a) The use belonged to the United States after the taking of title, and there is nothing to show that the award did not take into account delay in payment

The allegation of the petition is that the award did not include any amount for "the use of said premises and property" from June 28, 1918, the date of the expropriation, until December 3, 1918, the date of the award. It would have been error to include any such sum in the award. The title and ownership were taken by the United States June 28th. From that time it had a right to the use of the property belonging to it. Claimant was entitled to just compensation for the value of the property as of June 28th. If there was a delay

in payment of the compensation until December 3rd, it may well be that giving to this statutory provision for "just compensation" the same meaning as is given to the similar phrase in the Fifth Amendment (*Seaboard Air Line case*, 261 U. S. 299), just compensation would include the value as of June 28th plus the value of the *use of the money* until it was paid, but it would be the value of the *use of the money* representing the value of the property on June 28th, and not the value of the use of the property itself, to which the claimant would be entitled. The allegation that no compensation has been paid for the *use of the property* from June 28th to December 3, 1918, is not equivalent to an allegation that the award did not include interest from the date of the expropriation to the date of the award. For all that appears in the proclamation making the award, the President took into consideration the delay in payment in declaring that "just compensation for the property * * * is the sum of seven millions dollars," etc. There is, therefore, no sufficient allegation in the petition to overturn the presumption that the President complied with the terms of the Act of March 28, 1918, and took into consideration every proper element included in just compensation.

(b) The President alone was given power to determine and award compensation

We have here a case where the statute authorizing the seizure of enemy property expressly

provided for compensation and designated the agency to determine and award it. It was optional with the United States whether it would pay compensation to the enemy corporation for its leasehold estate, and it was for Congress to express the national will on this subject and, if it decided to pay compensation, to designate the officer or tribunal to determine and award it, and the award of compensation to the enemy lessee was in the nature of a bounty or gratuity based on a sense of fairness and not on any constitutional obligation. It follows that as Congress in this instance designated the President as the one to determine the compensation, it has definitely and deliberately refrained from giving the Court of Claims any authority or jurisdiction in the premises and has given the President exclusive power to determine and award compensation.

(c) The claim for compensation was sequestered under the Trading with the Enemy Act and does not now belong to the North German Lloyd

The Proclamation making the award contains a provision sequestering under the Trading with the Enemy Act (Act of Oct. 6, 1917, Chap. 106, 40 Stat. 411) the amount awarded to the enemy corporation and providing for the payment of the amount to the Alien Property Custodian.

The Act of March 28, 1918, authorized the acquisition of the docks "owned by the North German Lloyd Dock Company," a New Jersey corporation. It said nothing about the interest

of the German corporation, which was the lessee for 999 years. It is not clear that Congress intended any compensation to be paid to the German lessee. However, the President construed the Act to intend it, but he prevented the amount of the award accruing to the benefit of the enemy lessee by sequestering it.

It was the evident purpose of the President that any amount awarded to the North German Lloyd, the enemy corporation, should be paid to the Alien Property Custodian to be held by him under the terms of the Trading with the Enemy Act, and the statement in the Proclamation on that subject amounted to an order or requirement by the President under that Act, directing the sequestration of any amount to which the enemy corporation became entitled through the seizure of its property; and the claim, having been so sequestered, belongs to the Alien Property Custodian and the former German owner has no right to maintain an action on it.

The principles contended for by the United States in its brief in No. 102, *Rhederei M. Jebsen Company* v. *The United States*, together with the additional considerations set forth above, call for an affirmance of the judgment.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

OCTOBER, 1925.

No. 113. NORTH GERMAN LLOYD, APPELLANT, v. THE UNITED STATES

No. 116. HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT (ALSO KNOWN AS HAMBURG-AMERICAN LINE), APPELLANT, v. THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 113

NORTH GERMAN LLOYD, APPELLANT

v.

THE UNITED STATES

No. 116

HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-Gesellschaft (also known as Hamburg-American Line), Appellant

v.

THE UNITED STATES

APPEALS FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINIONS IN THE COURT BELOW

The memorandum opinion of the Court of Claims in No. 113 is found at R. 7 and in No. 116 at R. 6. See also 59 Ct. Cls. 974. In both cases the court adopted the opinion in No. 126, *Deutsch-Australische Dampfschiffs-Gesellschaft* v. *The United States.*

GROUNDS OF JURISDICTION

The judgments to be reviewed were entered March 17, 1924. (No. 113, R. 7; No. 116, R. 6.) The Court of Claims sustained demurrers to and dismissed the petitions. Appeals were allowed June 16, 1924 (No. 113, R. 15; No. 116, R. 13), under Sections 242 and 243, Judicial Code.

STATEMENT

These cases are alike in that, in each, recovery is sought for the value of enemy-owned material, supplies, stores, and equipment, and other personal property used in connection with the steamship business and located in and about the docks and piers at Hoboken. It is alleged that the seizures were made under the Act of August 29, 1916, authorizing the President in time of war to take possession of transportation systems, or any part thereof. This Act is quoted at length in the brief in No. 112 (page 66). The question is whether, under the terms of the Act of August 29, 1916, chap. 418, 39 Stat. 619, 645, or the circumstances of the taking, an intent or contract to pay compensation to enemy owners was necessarily implied.

ARGUMENT

Summary

I. The property was enemy owned and the United States had the right to take it without compensation.

II. The power of deciding whether compensation shall be paid for enemy property is in Congress. An intention to pay compensation to enemies should not be found unless expressed or necessarily implied.

III. There is nothing in the Act of August 29, 1916, under which the property was taken, to justify the inference that Congress intended to provide compensation for enemy interests.

IV. The circumstances attending the taking do not form a basis for implying an intent to pay compensation.

The property taken was enemy owned. The propositions contended for in the Government's briefs in No. 102, *Rhederei M. Jebsen* v. *The United States*, and No. 112, *North German Lloyd case*, dispose of this case. The United States had the right to take the property without compensation. It was and is for Congress to determine whether compensation should be paid for enemy interests; and if so, what officer or tribunal should award it. An intent to pay compensation in such a case should not be held to exist unless by express provision or necessary implication the intent of Congress is made clear. The Act of August 29, 1916, makes no express provision for compensation, and there is nothing in it to justify the inference that Congress intended to waive its right to seize without compensation enemy interests, and in this respect there is even less reason for implying an intent or contract to pay compensation to enemies than in the case of the Joint Resolution of May 12, 1917. An implied contract to pay compensation for citizens' interests no doubt arose because the Fifth Amendment entitled them to compensation, but this is no basis for an implication of intent or contract to pay compensation

to enemies. In so far as the seizure of enemy interests was involved, the Act of August 29, 1916, left open for further consideration by Congress the question whether compensation should be paid; and if so, the selection of the tribunal or officer to award it.

The contention that the receipts and memoranda signed by officers of the United States at the time the property was taken amounted to a contract to pay is without substance. (No. 113, R. 4–5; No. 116, R. 3–4.) Their purpose was to preserve a record of what property was turned over to the officers of the United States.

The judgments in these cases should be affirmed.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

OCTOBER, 1925.

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 114

NORTH GERMAN LLOYD, APPELLANT

v.

THE UNITED STATES

No. 117

HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT (also known as Hamburg-American Line), Appellant

v.

THE UNITED STATES

No. 126

DEUTSCH-AUSTRALISCHE DAMPFSCHIFFS-GESELLSCHAFT, Appellant

v.

THE UNITED STATES

APPEALS FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

STATEMENT

These cases differ in no substantial respect from No. 102, *Rhederei M. Jebsen Company* v. *The*

United States. Recovery is sought for the value of enemy-owned vessels, titles to which were taken by the United States subsequent to May 12, 1917, by Executive Order, pursuant to the Joint Resolution of May 12, 1917.

ARGUMENT

The brief for the Government in No. 102, *Rhederei M. Jebsen Company* v. *The United States,* covers every question in these cases. The judgments should be affirmed.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

OCTOBER, 1925.

APPENDIX

LEGISLATIVE HISTORY OF JOINT RESOLUTION OF CONGRESS OF MAY 12, 1917 (S. J. Res. 42), CHAP. 13, 40 STAT. 75

PROCEEDINGS IN THE SENATE

When the resolution was first introduced in the Senate on April 23, 1917, it read:

> *Resolved, etc.*, That the President be, and is hereby, authorized to take over for the United States the possession and title of any vessel, within the jurisdiction of the United States, of any subject or citizen of any nation with which the United States may be at war, and, through the United States Shipping Board or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise, as he may see fit.
>
> The property rights and claims to compensation, if any, of such subject or citizen shall be determined at the end of the war. [Cong. Rec. 65th Cong., 1st Sess., vol. 55, pt. 1, p. 930.]

It was thereupon referred to the Committee on the Judiciary.

When reported to the Senate by Mr. Culberson, Chairman of the Judiciary Committee, on April 30, 1917, it read:

> That the President be, and he is hereby, authorized to take over to the United States

the possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States, except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

Sec. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings hereinafter authorized on any claim for compensation.

Sec. 3. That any person or corporation may institute a suit against the United

States of America in the Court of Claims thereof for the recovery of the damages which he may sustain through the exercise of the power herein conferred upon the President. Such damages shall be limited to just compensation for the interest or right of which claimant is deprived by reason of such taking. In ascertaining such compensation there shall be excluded any value added to the vessel by reason of work done or improvements placed thereon by the United States. In order to recover a judgment the claimant must prove that he was the owner at the time of taking of the interest or right for whose taking he seeks compensation; and that no nation with which the United States may be at war at the time of such taking, or at the time of rendition of judgment, nor any corporation, subject, or citizen of such nation, has any interest, direct or indirect, in such claim, or in the judgment which may be rendered thereon; and that claimant acquired in good faith and for substantial consideration the right or interest, for whose taking he seeks compensation, prior to the commencement of war with the nation whose citizen or subject owned, in whole or in part, the vessel taken, or under the register or flag of which such vessel was at the time of entry into the jurisdiction of the United States; if claimant be a corporation it must also prove that the majority of its stock is not owned by subjects or citizens of a nation with which the United States may be at war and

was not so owned at the beginning of such war. If the required facts be established the court shall have power to render judgment for the amount due claimant subject to the right of appeal to the Supreme Court of the United States; but if such facts be not established the court shall render no judgment and shall make a report to Congress stating its findings of fact.

SEC. 4. The Court of Claims is hereby authorized to make all needful rules and regulations not contravening the laws of the land or terms of this act for executing the provisions hereof.

SEC. 5. All claims upon which suit may not be instituted prior to the expiration of one year from the date of exchange of ratifications of a treaty of peace with the Imperial German Government shall be forever barred. [Cong. Rec., 65th Cong., 1st Sess., vol. 55, pt. 2, p. 1572.]

Mr. Underwood asked the question as to whether the purpose of the Joint Resolution was to fix at that time the status or the right of persons claiming ownership in the foreign vessels to go into our courts at a future time and sue the United States.

Mr. Fletcher, a member of the Judiciary Committee, answered:

> It provides that where there is any interest or any lien or any claim against any of these vessels by an American citizen, for instance, it may be hereafter adjusted in the Court of Claims.

Mr. UNDERWOOD. Well, does it not go further than American citizens?

Mr. FLETCHER. It includes neutrals also; but as to those citizens or subjects or corporations of countries with which the United States is at war at the time of the seizure or at the time of the adjudication, it provides that those cases may be determined in the Court of Claims simply as to the facts, and the Court of Claims is to report those facts back to Congress. The Joint Resolution provides that no judgment shall be entered in those cases by the Court of Claims. [P. 1572.]

Mr. UNDERWOOD. * * * On the question as to whether the owners of these vessels should be paid the value of the vessels, I think it is a question that ought to be determined in the future. The German Government sank our ships on the high seas when we were a neutral power, and I have heard nothing to indicate that they are prepared to pay American citizens for the sinking of those ships the value of those ships; and when we have German vessels in our hands, as far as I am concerned, I am not disposed to pay the citizens of Germany the value of that property until they are prepared to pay our citizens the value of the property they have destroyed. [Pp. 1572, 1573.]

Continuing, Mr. Underwood said (p. 1573):

When you pay a lien of an American citizen on a German ship you may release

a German citizen from his obligation under the lien. I fear you are clearing the way for our enemies hereafter to establish a precedent for the payment for their property.

* * * * *

Of course, I feel that it is of the utmost importance that these ships should go to sea, but I must say, as far as I am concerned, I think all the action that is needed to-day, if any action is needed at all, for the Congress of the United States is to pass a bill directing and authorizing the President of the United States to take over these ships, put them in commission and use them, and then leave the question as to whether we should pay for them or pay for the use of the ships to be determined when the war is over and the status of American citizens and the status of German citizens is fixed by a treaty of peace.

* * * * *

At page 1575:

Mr. SMITH of Georgia. I desire to amend the joint resolution by striking out, on page 3, at the beginning of line 3, the words "hereinafter authorized," and to strike out all of section 3, all of section 4, and all of section 5 of the joint resolution as reported from the committee.

Mr. STONE. I ask for a division on the question.

The PRESIDING OFFICER. The question is on agreeing to the first amendment suggested by the Senator from Georgia, namely, to

strike out the words "hereinafter authorized" at the beginning of line 3, on page 3.

The amendment was agreed to.

The PRESIDING OFFICER. The question now is on the second amendment suggested by the Senator from Georgia, to strike out all of section 3, which will be stated by the Secretary.

The SECRETARY. It is proposed to strike out section 3, in the following words:

"SEC. 3. That any person or corporation may institute a suit against the United States of America in the Court of Claims thereof for the recovery of the damages which he may sustain through the exercise of the power herein conferred upon the President. Such damages shall be limited to just compensation for the interest or right of which claimant is deprived by reason of such taking. In ascertaining such compensation there shall be excluded any value added to the vessel by reason of work done or improvements placed thereon by the United States. In order to recover a judgment the claimant must prove that he was the owner at the time of taking of the interest or right for whose taking he seeks compensation; and that no nation with which the United States may be at war at the time of such taking, or at the time of rendition of judgment, nor any corporation, subject, or citizen of such nation, has any interest, direct or indirect, in such claim, or in the judgment which may be rendered

thereon; and that claimant acquired in good faith and for substantial consideration the right or interest, for whose taking he seeks compensation, prior to the commencement of war with the nation whose citizen or subject owned, in whole or in part, the vessel taken, or under the register or flag of which such vessel was at the time of entry into the jurisdiction of the United States; if claimant be a corporation it must also prove that the majority of its stock is not owned by subjects or citizens of a nation with which the United States may be at war, and was not so owned at the beginning of such war. If the required facts be established, the court shall have power to render judgment for the amount due claimant subject to the right of appeal to the Supreme Court of the United States; but if such facts be not established the court shall render no judgment and shall make a report to Congress stating its findings of fact."

Mr. CULBERSON. On that I ask for the yeas and nays.

The yeas and nays were ordered; and having been taken, the result was announced—yeas 64, nays 10, as follows:

* * * * *

So the amendment was agreed to.

The PRESIDING OFFICER. The question now is on the next amendment, suggested by the Senator from Georgia, to strike out all of sections 4 and 5, which will be stated by the Secretary.

The SECRETARY. It is proposed to strike out section 4 and section 5, in the following words:

"SEC. 4. The Court of Claims is hereby authorized to make all needful rules and regulations, not contravening the laws of the land or terms of this act, for executing the provisions hereof.

"SEC. 5. All claims upon which suit may not be instituted prior to the expiration of one year from the date of exchange of ratifications of a treaty of peace with the Imperial German Government shall be forever barred."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. WALSH. I offer the following amendment to come in as a new section to be known as section 3.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. Add as a new section the following:

"SEC. 3. That any vessel so seized shall be condemned in any district court of the United States for the district in which the same may be or in any court created by or under the authority of the United States having admiralty jurisdiction over the place at which such vessel may be seized, or into which it may be taken, pending which proceedings for condemnation it may be requisitioned by the United States under order of the court for such use or disposi-

tion as is provided for in section 1 of this act.

"No bounty, prize money, bonus, or other gratuity or reward shall be due or be paid to any person on account of the taking or seizure of any of the ships mentioned in section 1 of this act."

Mr. CULBERSON. On that I ask for the yeas and nays.

The yeas and nays were ordered; and having been taken, the result was announced—yeas 3, nays 66, as follows:

* * * * * *

So Mr. Walsh's amendment was rejected.

Mr. KNOX. I move as a substitute to insert the following:

The Secretary read as follows (p. 1576):

"Whereas the activities of the Imperial German Government in its efforts to destroy the commercial vessels of the United States, its allies, and the vessels of neutral powers creates an immediate emergency and an extreme necessity to at once replenish in a practical way the loss of ships thus sustained: Therefore be it

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he is hereby, requested to at once requisition all vessels of alien enemies of the United States in the ports and waters of the United States, or elsewhere found, and to use the

same in the prosecution of the war against the Imperial German Government in such trade or manner as will, in his judgment, best subserve the interests of the United States and its allies."

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Pennsylvania.

Mr. KNOX. On that I demand the yeas and nays.

The yeas and nays were ordered; and having been taken, resulted—yeas 28, nays 43, as follows:

* * * * *

So Mr. Knox's amendment was rejected.

The joint resolution was reported to the Senate as amended and the amendments were concurred in.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes."

After five hours spent in legislative business and executive session the doors were reopened.

So the resolution as passed by the Senate read (p. 1572 et seq.):

That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

SEC. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These

findings shall be considered as competent evidence in all proceedings on any claim for compensation.

PROCEEDINGS IN THE HOUSE

(Excerpts from the Congressional Record, vol. 55, part 2, 65th Congress, 1st session)

At pages 1900 and 1901:

Mr. ALEXANDER. Mr. Speaker, I call up for consideration Senate joint resolution 42, authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes.

Mr. MANN. Mr. Speaker, I suggest that the gentleman has to move to go into Committee of the Whole House on the state of the Union.

Mr. ALEXANDER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of Senate joint resolution 42, and pending that motion I would like to have some agreement about the time of general debate. I ask unanimous consent that general debate be limited to an hour, to be confined to the subject matter of the resolution.

* * * * *

Mr. ALEXANDER. Mr. Chairman, I ask unanimous consent that the first reading of the resolution be dispensed with.

Mr. MANN. Mr. Chairman, I shall have to object to that. We do not know yet what the Senate resolution is.

The CHAIRMAN. The Clerk will report the resolution.

The Clerk read as follows:

"*Resolved, etc.,* That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

SEC. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his depart-

ment. These findings shall be considered as competent evidence in all proceedings on any claim for compensation.

Mr. ALEXANDER. Mr. Chairman, the gentleman from North Carolina [Mr. Webb] introduced House joint resolution 62, which was referred to the Committee on the Merchant Marine and Fisheries and was reported back to the House on the 1st day of May. As reported to the House, the text of House joint resolution 62 is the same as the text of Senate joint resolution 42 as it passed the Senate. Mr. Polk, at the first hearing before the House committee, was present and made a statement, and Mr. Woolsey, representing the Department of State, and Attorney General Gregory were before the House Committee on the Merchant Marine and Fisheries at the second hearing. After hearing the statements made by these gentlemen, the committee agreed to strike out all of the subject matter of House joint resolution 62 and substitute, by way of amendment, the provisions in Senate joint resolution 42 as it passed the Senate. House joint resolution 62 as amended comes to the House with the unanimous approval of the committee, There are two propositions contained in the resolution.

First—

That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all Territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction

was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag or was under register of any such nation or any political subdivision or municipality thereof; and through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

The second proposition is this:

That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation.

This resolution is intended to give the President authority to take over the immediate possession and title of the German refugee ships. These ships sought refuge in the harbors of the United States and of our insular possessions following the outbreak of the war in Europe, and are now within the jurisdiction of the United States.

* * * * *

At page 1901:

Mr. ALEXANDER. Between 600,000 and 700,000 tons of these ships, many of them very fine pas-

senger ships and others freight ships, are in our harbors. They sought refuge in our harbors at the beginning of the war in Europe, and they were still in our harbors at the time we became parties to the war against Germany. They did not dare leave our ports for fear of capture by British and French cruisers hovering along our coasts. Many ships were more or less damaged by their officers and crews following our declaration of armed neutrality, presumably by order of the Imperial German Government. A survey of the vessels has been made, and repairs are proceeding with a view to their use in service of the United States at the earliest practical moment. They are now in the possession of the collectors of the ports in the several ports where they are now docked under orders issued by the Secretary of the Treasury.

It has been said that the President might have taken over possession of these vessels, seized them, confiscated them on behalf of the United States without action by Congress. I question whether it would have been proper for him to do so. I think the decisions of the Supreme Court of the United States sustain the contrary view and that Congress should authorize that to be done.

That we have the right to take over the title to these vessels, to seize them, to confiscate them, I think is beyond question. It is not my purpose to discuss this matter at length, but I will call attention to the case of Brown against United States, Eighth Cranch, page 121, and particularly to the statement by Chief Justice Marshall as regards the right of the Government to seize or confiscate enemy ships * * *.

* * * * *

Continuing at page 1903:

* * * * *

Mr. MANN. No; but it takes the ships and title without compensation.

Mr. ALEXANDER. Yes; and we have the right to take the ships and title without compensation, too.

Mr. MANN. Well, that is a constitutional question. I do not agree with the gentleman on that.

Mr. ALEXANDER. If they have any equities, they must be adjusted hereafter, just like the equities of the German owners, if we pursue the time-honored policy of our Government on the conclusion of the war, or later.

Mr. MANN. Yes; "later" is well said.

Mr. ALEXANDER. We could compensate the Hamburg-American and the North German Lloyd Steamship Companies for these ships; if we pursue our policy in the future as in the past we will compensate these owners for these vessels, but at this time, early in the war, and with conditions changing from day to day, the equities shifting, it will be time enough, in the view of the Senate and in the view of the administration and in the view of the Committee on the Merchant Marine and Fisheries, to adjust these equities after peace has been declared, because in the meantime we will no doubt have property destroyed; we will have counterclaims against Germany; and it will be time enough to do so then.

* * * * *

Continuing at page 1904:

Mr. ALEXANDER. All that is quite apart from the issue here. We are at war with Germany and these are German ships in American ports. We have a right to seize them and confiscate them if

we wish to do so. The equities as between us and private owners can be left to be adjusted hereafter.

* * * * *

Mr. ROBBINS. Will the gentleman answer a question?

Mr. ALEXANDER. Yes.

Mr. ROBBINS. What is the probable liability of the United States for these ships so seized?

Mr. ALEXANDER. None at all.

Mr. ROBBINS. If we answer later in damages, what is the liability?

Mr. ALEXANDER. None at all.

Mr. ROBBINS. Then the gentleman thinks we never will be called upon to pay for these ships?

Mr. ALEXANDER. If we do it will not be a legal liability, but on account of the policy of the Government in the past to recognize claims of private parties.

Mr. ROBBINS. The gentleman stated that a part of these ships were owned by corporations organized by Germans in the United States.

Mr. ALEXANDER. No; I stated just the contrary; they are owned by German corporations incorporated in Germany.

* * * * *

At page 1921:

Mr. STAFFORD. I wish to call the attention of the gentleman to the fact that by the action of the committee that section was eliminated.

Mr. HARDY. The gentleman is correct. That was the form in which the House bill stood, and is perhaps what will be embodied in future legislation.

But in order to expedite this legislation we have eliminated all except the first and second sections. As the bill now stands we have only section 1 and section 2, which is the form in which the resolution was passed by the Senate. Section 2 provides for a survey and estimate of the value of the ships taken over. It does it in order that that survey might be held as prima facie evidence of the facts; that is, of the value of the ships when taken over. It does not undertake to decide the matter or manner of compensation now. We leave the final settlement of the claims of American citizens and of all others to be ascertained and determined by proceedings that may be instituted under the laws that will be passed when Congress has ample time to pass those laws.

I take it that the rights of German citizens as against the American Government for property of theirs that is taken under this law will in its ultimate conclusion depend largely upon the action of the German Government with reference to the property of our citizens which may be taken over by that Government, and that that will be settled in the final terms of peace under the treaties which may be negotiated between this Government and the German Government; and if we, in accordance with the ideas of the gentleman from Wisconsin [Mr. Stafford], were to give the right now to a German citizen to go into our court and establish his claim and obtain judgment against the Government of the United States for damages, we would then leave our citizens hopeless for any recovery in Germany after the war was ended, and I think we would do something that no nation ever has

done, or ever will do, if, pending the war and while the war is going on, we authorize German citizens to institute a suit against our Government for property taken belonging to them and recover judgment and obtain compensation before that war is ended. That is what the gentleman from Wisconsin wants us to do.

I want to say that, so far as our policy as a nation is concerned, from its foundation it has never been a policy of ruthless power. We have never intended, never desired, and never will desire to wrongfully take the property of citizens of any nation, even though we are at war with that nation. It has been our policy that any property which comes rightfully within our jurisdiction will have all of the rights of its owner preserved, and when this war is ended there will not be a German right which will be violated by the American people, and I believe I know this Congress well enough to know that it will never use its power to take from any man, German, Austrian, Englishman, Frenchman, or American, any right that justly belongs to him, but we do not propose to settle up the claims that should be settled by the German Government for and with its citizens before we know what Germany will do with American rights. [Applause.]

Mr. Chairman, this is a very simple proposition. There are over 600,000 tons of German shipping in our ports, which we urgently need now in war times. This bill should be passed in 20 minutes. We take those vessels, and under section 2 we arrive at their value as best we can, and wait until the war is ended to determine what remedies,

rights, and recompenses we shall grant to those damaged.

* * * * *

At page 1922:

Mr. HARDY. Will the gentleman yield for a question?

Mr. SMALL. Certainly.

Mr. HARDY. Does not the gentleman recognize the fact that by only incorporating sections 1 and 2 in this bill, finding the value and leaving it there as the permanent finding, that we put ourselves in the attitude by future legislation to do whatever Congress in deliberate purpose may find to be just?

Mr. SMALL. The gentleman is entirely right, and I have no disposition to criticize the committee in not providing in this bill any specific declaration upon compensation; but as a Member of this House, believing that we are big enough and rich enough to do exact and even justice, without regard to what is done by any other country, I wish to make, even from an humble source, an expression of what I believe ought to be the attitude of the United States upon this question, and whenever the time shall come, and I am not in favor of postponing that time until we can weigh up in the scales the acts of Germany so as to determine whether by reason of these acts we should do an act of justice or not, that I am in favor of this great country doing justice, regardless of the attitudes or acts of any other country.

Mr. TOWNER. Will the gentleman yield?

Mr. SMALL. Certainly.

Mr. TOWNER. Is not there great force in the suggestion made by the gentleman from Texas

[Mr. Hardy] when he says that it would be very unwise for us at this time to make any declaration regarding that matter, for the reason that necessarily there will be a treaty at the close of this war between Germany and the United States, and in such treaties all these matters are the matters that are determined by treaties as to the rights of individuals respectively against the other countries for damages for the destruction of their property? That is always included in such treaties. and is it not wise for us now not to put any provision in this bill, because that will be attended to when the treaty relations between the Governments are closed at the end of the war?

Mr. SMALL. I admit, Mr. Chairman, there seem to be strong reasons for that, and I so endeavored to express myself a moment ago.

The CHAIRMAN. The time of the gentleman from North Carolina has expired.

Mr. HARDY. Will the gentleman yield for just another question?

The CHAIRMAN. The time of the gentleman from North Carolina has expired.

Mr. HARDY. Mr. Chairman, I ask that he may have five minutes more.

Mr. ALEXANDER. Mr. Chairman, I yield five minutes more to the gentleman.

Mr. HARDY. I would just like to call the gentleman's attention to another thing along that line. The rights of our citizens against foreign governments is never presented through a suit against those governments, but through diplomatic representation of our diplomatic agents. The rights of German citizens will be ascertained after this war

is over through diplomatic channels, by diplomatic methods, by the German Government, and our citizens will have their rights established in the same manner. So that a claim for damages now would be extremely contrary to international custom, it seems to me.

Mr. SMALL. I am not prepared to make the contention that our relationship toward this question in making compensation should be set forth in this bill, nor am I particular as to when it is done, although I do not think there should be any undue delay. The only point I make is that we should do that which is right and just with relation to our appropriation of these ships.

* * * * *

At page 1923:

Mr. EDMONDS. * * *.

I am sure there was no intention to confiscate this property. It was simply left open for adjudication at an early date.

We need the ships. There is no question about that. We have got to have them. They are lying useless in the harbors, and the attorneys of the Hamburg-American Line do not make any question as to our power to take them. They simply state that in so far as the resolution empowers the President to take over the ships of the Hamburg-American Line they do not raise any question.

We take the ships. We have arranged to leave the question of compensation open. The treaty is here. Undoubtedly all those questions will be brought up when this case will be adjudicated in

the Court of Claims, where they have a right to take it.

In the case of Wagner against The *Juniata*, Twenty-eighth Federal Cases, page 3821, the court, reaffirming the principle stated by Chief Justice Marshall, said:

> In respect to the vessel herself, now in the port of New Orleans, I consider the reasoning of the court equally strong against the claim of the libellant; she is to all intents and purposes property as much infra-territorial, within the limits of the United States, as the cargo placed in store a few hundred yards from the shore where she is moored; and she can with no more reason be said to be beyond the territorial limits of the United States than the river upon whose waters she is now floating.

Now, gentlemen, undoubtedly the committee, realizing that the Government needed these ships, has taken the best course that it is possible to devise to take possession of them at this time, and has left the question entirely as to how they were to be settled open for the future.

* * * * *

Commencing at page 1924, Mr. Hadley said:

There is one point to which I wish to address myself very briefly, which was being touched upon by the gentleman from Texas [Mr. Slayden] when I was called out. Not having heard his remarks, I wish to allude to that phase of the resolution, though it may be somewhat of a repetition. I do not know about that. I refer to the second section of the resolution.

There seems to be quite a difference of view as to what we ought to do with regard to the question of compensation. I take it, when this discussion has been analyzed, there is really no serious controversy over any other question, if indeed there is a controversy there. There should be none upon that point. I desire to draw the attention of the committee directly to what the resolution provides in terms. It provides that the Secretary of the Navy shall appoint a board, with the approval of the President, to make a survey of the vessels which it is proposed to take over, with a view to determining their actual value at the time they are taken; and not only the vessels but the equipment and appurtenances and all property contained therein at the time of the taking. And what is the purpose of that survey? It is in order that it be preserved as a permanent record for future use in the event it should become necessary to consider the question of compensation. It is to be preserved, and to be submitted in any court of competent jurisdiction that may deal with that subject. That is expressly provided by the resolution.

It is true that the resolution does not in terms declare that compensation shall be paid. It is equally true that it does not either declare or intimate that compensation shall not be paid. It simply provides the present machinery whereby the evidence of value shall not only be ascertained but that it shall be preserved; and having been ascertained and preserved, it makes it mandatory, in the terms of the resolution, that such evidence shall be recognized as competent proof in any

court having jurisdiction. At all events that is the effect of this language:

> These findings—
>
> Meaning the findings of the board of survey—
>
> shall be considered as competent evidence in all proceedings on any claim for compensation.

How much further can Congress go at this time? How much further should it go than to preserve for the benefit of all persons who may be interested in the subject matter the evidence to which the owner may appeal in the future to show his damage? We ought not now to attempt to define the measure of damage, or to define the principle upon which compensation shall be paid; but we ought to preserve the means of determining the elements of value which go to the determination of the question of compensation and the measure of damage, in any court in which the question may subsequently arise. In my judgment that is as far as we ought to go at this time. We recognize that compensation may be due or may not be due. We recognize that under the circumstances of the case that question may arise, and it is proposed in the resolution to take the only sensible, reasonable, and practical means, as I look at it, of preserving the record for the benefit of whoever may be interested, whether he be alien or citizen. Then whatever court may hereafter be applied to, whether it be a prize court, court of claims, or any other court of competent jurisdiction, it will be a matter for that court to determine whether the compensation will be paid and not a question for us now to determine. It is not feasible and not

practicable that we should attempt to determine that matter or to preserve any other right except to preserve all the means by which the real parties in interest may be protected if they ought to be protected. That is as far, I think, as we ought to go.

Mr. SLAYDEN. Will the gentleman yield?

Mr. HADLEY. I will.

Mr. SLAYDEN. Does not the gentleman think that after the war in an adjustment made by special commissions or diplomatic agents these records would be useful, and the fact that Congress did take such pains to prepare for the making and preservation of the records would indicate a disposition on the part of the Representatives of the people in this country that that should be the policy of the Government.

* * * * *

Mr. HADLEY. That is correct and represents my view. I thank the gentleman for eliciting it. In addition to the preservation of the record for court procedure, it will be useful in the determination of questions arising on the treaty of peace that may be entered into at the conclusion of the war, and, as suggested by the gentleman from Texas, will show the resolution and purpose on the part of the Government to recognize the claim for damages in case the party has a right to it.

It has been stated that we have 600,000 gross tons, approximately, of German tonnage to be affected, exclusive of that of other countries, or about 350,000 net tons. Everyone concedes and recognizes the immediate, urgent, and pressing necessity [p. 1925] on the part of this Government for additional tonnage. I regard it as not only

our right under the authorities which have been cited and under the statements made by the distinguished chairman of the committee to take this tonnage over, but under the circumstances—the war in which we are engaged and the circumstances which led up to it—it is our duty to do so and our duty to impress it into the service of the country for the prosecution of our commercial business and for the purpose of contributing to the support of the armies of the Allies as well as our own.

I do not desire to repeat the arguments and go over the discussion of international treaties, because they have been very fully presented. I wished primarily to speak on the question of the construction of the second section of the resolution. I hope gentlemen considering the resolution will not lose sight of the fact that, while the committee did not attempt to provide the machinery for the final solution and determination of the matter, it did not ignore the fact that compensation might be had. I think the committee has done the proper thing in providing the means of ascertaining the value, so that the determination of the question of compensation in the future may be had if, indeed, it should arise. I yield back the balance of my time.

Mr. ALEXANDER. Mr. Chairman, I yield five minutes to the gentleman from Virginia [Mr. Montague].

Mr. MONTAGUE. Mr. Chairman, the remarks that I desired to make have been anticipated by the lucid statement of the gentleman from Washington, who has just taken his seat.

It appears to me the resolution has gone as far as it is practicable to go, as far as sound expedi-

ency and wisdom will justify. We can not go further, because we have no information to enable us to go further. There may be in the progress of this war developments that will enter into this question, and that different application of the principles will be then considered from what would now be considered if action had finally to be taken at this time.

That is to say, Mr. Chairman, that we can not do exact justice until we have all the facts in hand and the final accounting is taken. I do not take the view of the gentleman from North Carolina [Mr. Small] that we should now utter or proclaim an abstract rule of justice respecting our contemplated conduct. I view this matter largely as one of offset and of accounting. If we have claims against Germany and Germany has claims against us, they can only be determined in or at the final accounting.

Mr. HARDY. Will the gentleman yield?

Mr. MONTAGUE. For a question.

Mr. HARDY. And that will be through a representation of the diplomatic agents of the several Governments representing its citizens?

Mr. MONTAGUE. I imagine that would be the agency or instrumentality to ascertain these facts and to perform such accounting and settlement.

Mr. TOWNER. Will the gentleman yield?

Mr. MONTAGUE. I will.

Mr. TOWNER. Is it not the modern approved practice in the settlement of claims of this character that there shall be appointed by the final treaty a commission to determine the respective claims of individuals arising out of the war?

Mr. MONTAGUE. I think that has been the practice, but I do not desire to discuss the practice; I only wish to impress the fact that the claims of the United States and the claims of Germany are not separable. They are related and inseparable in the final accounting, and to do justice we must have them both at hand and give them both consideration and a fair apportionment.

* * * * *

Mr. MONTAGUE. * * * May I be permitted one other remark in relation to the suggestion of my friend from Texas [Mr. Slayden]? I expect to see the United States practice the most rigid lines of justice and adherence to her treaties; but what circumstances may hereafter occur to disrupt, neutralize, or modify our treaty rights we do not now know, we can not now foresee. To say now that we can lay down a hard and fast line as to exactly what we will do without knowing what Germany will do or has done is to jump into the dark. All we can do is to do what we have done, to take the appraisement or survey of these vessels as they now stand, fresh in our minds as the incident occurs, and hold it hereafter as evidence to be submitted to the appropriate tribunal that will finally determine the mutual offsets, which offsets may not all now be in existence but may hereafter arise from time to time until the conflict is ended.

Mr. GREENE of Massachusetts. Mr. Chairman, I yield 10 minutes to the gentleman from Kansas [Mr. Campbell].

Mr. CAMPBELL of Kansas. Mr. Chairman, I shall not use the 10 minutes for the very good reason that what I had in mind to say has been better said than I could have said it. There is

no question about not only the right but the duty of the United States at this time to take over these ships. What has been done and what shall be done with respect to the taking of the ships is a matter that appeals to everyone, layman as well as legislator, and those who have given no attention whatever to the study of international law as well as to those who have given it a most thorough study.

I have been impressed, the more I have thought about it, with the fears of those who have raised the question as to whether or not justice would be done to the owners of these ships at the close of the war. I do not agree that any settlement should be made at this time with the owners of these ships; but the owners of these ships need have no fear; they need not look forward to a time when the war shall have been ended to any difficulty they will have in getting justice from the United States. As to whether or not these ships shall become the victims of submarines at the hands of the German Government raises a question that will no doubt enter into the settlement of the matter of the payment for these ships; but the Government of the United States has always maintained its position of adhering with the strictest account to every treaty that it has entered into and to every obligation that it has assumed or that is thrust upon it, and that will be true with respect to these ships and to every incident growing out of this war as it has with respect to every other. The owners of the ships and the German Government may well look back to the action of the United States at the termination of the Spanish-

American War, when this Government did more than was really expected of it by the vanquished. We did more for Spain than Spain had a right to expect. We did more for Spain than many of the people of the United States believed we ought to do; but it was the policy of the Government to do just what was done. That is the American feeling, and has been. That is the spirit of the American soldier at the termination of a war in which he has been a conqueror. Gen. Grant said to Gen. Lee and his men, "Keep your side arms and take your horses; you will need them for the spring plowing." That is the American spirit. So, I say, there need be no apprehension upon the part of the rightful owners of these ships with respect to the manner in which they shall be treated at the termination of the war. But we can not say now—we can not say here—what the conditions will be between now and the end of the war. We can not say what the treaty of peace or what range of subjects the treaty of peace will cover; but that treaty will make provision for such commissions as are necessary to adjust the matters growing out of the war with respect to the claims of citizens of foreign countries residing here, whether belligerents or otherwise, whose property has been affected during the war.

That is all I had in mind to say, and I would not have stated it if it had not been that it has seemed to me there has been some anxiety here for fear that the Government of the United States would take advantage of its power in the premises and in the final conclusion not do justice by the

owners of any property it may seize for war purposes. [Applause.]

I yield back the remainder of my time.

* * * * *

At page 1929:

Mr. LENROOT. I was coming to a discussion of that proposition if the gentleman had not asked me that question. I was stating, first, what international law was upon the subject. I stated what the policy of the United States had been, and I am frank to say I believe that should continue to be the policy of the United States. But every situation must depend upon the particular facts in that situation. Now, what is the situation that we have before us at the present time with reference to the taking over of these ships? I do not say for a moment that we ought not to compensate the owners of these ships. I do say the committee is right in not undertaking to provide for their compensation now. And let me give the reason why I think it should not be done. In the first place, it is a matter of grace with any nation, and not of international law, as to whether they will compensate or not. If they do compensate, there is an obligation of equitable fair dealing upon the part of the owners of the ships as well as upon the part of the United States Government. Now, we are informed with reference to many of these ships that they were damaged and disabled by their owners, many of them, for the very purpose of depriving the United States of the power of making use of them. Now, shall it be said, as a matter of justice and equity, that an enemy subject who is

the owner of a ship, and who voluntarily disables the ship for the purpose of injuring the United States, shall have the same rules of equity applied to him as to compensation as one who, finding his ship in the harbor and unable to depart, leaves that ship to be taken over and paid for by the Government? I think not.

Mr. SISSON. Then in addition to the statement made by the gentleman at this time we ought not to go into the question of payment, because in the settlement of the international differences and damages that may have been done to American citizens by the German Government those things would have to be considered at the same time.

Mr. LENROOT. That is true. Then there is another consideration. When these ships are taken over they will be engaged in merchant transportation. They will be in every sense of the word, so far as what they do is concerned, merchant vessels. Now, Germany, under international law, if she would observe it, has certain obligations with reference to the capture or destruction of merchant vessels. Now, when we take these vessels over, if Germany sees fit, in violation of international law, to destroy one of these German vessels that we have taken over, is it not a question for serious consideration at least, when this war is over, whether we should compensate a German subject for a vessel that has been unlawfully destroyed by his own Government? [Applause.]

Secondly, supposing one of these vessels is captured on the high seas by the German Government, as she has a right to [p. 1930] capture them,

and supposing when Germany captures them she turns the vessel over to its owners, shall the owners get the vessel and also get from the United States Government the value of the vessel? Perhaps so. I am not expressing any opinion about it. But certainly we ought not at this time to make any such provision as that.

Something has been said about the treaty existing between this Government and Germany. I do not know whether that section has ever been read into the Record, but I think it should be, with reference to the obligations contained in the treaty of 1799 between this country and Germany. I want to read article 12 of that treaty.

> Experience having proved that the principle adopted in the twelfth article of the treaty of 1785, according to which free ships make free goods, has not been sufficiently respected during the two last wars, and especially in that which still continues, the two contractng parties propose after the return of a general peace to agree, either separately between themselves or jointly with other powers alike interested, to concert with the great maritime powers of Europe such arrangements and such permanent principles as may serve to consolidate the liberty and the safety of the neutral navigation and commerce in future wars.

Now, mark this:

> And if in the interval either of the contracting parties—

And that interval has existed now for the past three years—

> And if in the interval either of the contracting parties should be engaged in a war

to which the other should remain neutral, the ships of war and privateers of the belligerent power—

In this case Germany—

shall conduct themselves toward ports the merchant vessels of the neutral power—

In this case the United States up to the declaration of war—

as favorably as the course of the war then existing may permit, observing the principles and rules of the law of nations generally acknowledged.

That was the treaty between this country and Germany. Is there anyone who will say that that treaty has not been most openly, flagrantly, and deliberately violated by Germany? [Applause.] And then will anyone say that because there was also in another article of that treaty a provision that enemy subjects whose property is taken should be compensated, we shall be bound, but Germany shall not? Those are questions that ought not to be settled now in this bill. Those are questions that ought to come up and be settled when this war is over. [Applause.]

* * * * *

Mr. FESS. Mr. Chairman, I think the gentleman from Wisconsin [Mr. LENROOT] made two very important observations on two technical questions that grow out of this proposed resolution, both of which should be kept in mind when the matter of future adjustment is considered. I think these ought to be emphasized because they are largely the crux of the entire dispute over the question of confiscation, if here is such a dispute. I do not believe that there is anyone in the Congress who

seriously questions the right under international law of the United States to take over these vessels. They are property of citizens of a foreign country which is at war with us. I can not understand upon what angle any discussion would be carried on that the United States, which is now a belligerent country, could not take over the vessels in the ports that belong to its enemy. Such right is certainly clear under international practices. The first section of the bill authorizes the President to do that thing, and if the bill would stop with that there might be some question of the wisdom of the policy, but certainly none on the authority, for that first section suggests that the United States can take over title and possession and operate or lease or charter and equip these vessels. That indicates a right in a belligerent nation, and that right is certainly well defined in international law; but the second section suggests whether this is to be confiscation or requisition. If the second section were not in the bill, we would jump to the conclusion that it probably meant confiscation. The first section takes over both possession and title and makes no suggestion of future adjustment. But the second section suggests that it is to be requisition, or at least it lays the grounds for it, since it there provides for a board of survey to ascertain the values of these vessels. It does not specify just why that is done, but all of us understand that in case it is to be adjudicated on the question of value, this Government by this provision shows clearly its intention not to take any advantage of the owners of these vessels. We here undertake to procure the facts by a jury properly appointed,

and thus fix the basis upon which any future adjudication that might be required, or seemed to be justified, might be had. I think that is as far as the resolution ought to go. It leaves the question of adjustment for a later date, to be determined by subsequent events.

In other words, the question as to whether it is to be confiscation or requisition is not to be settled now. I do not think it ought to come up now. The question ought to be reserved for later consideration, because as has been so frequently stated we do not know all the elements that may be involved.

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Continuing at page 1932:

Mr. STEVENSON. But they were given the benefit, or, rather, exculpated of being guilty of treason, because acting in concert under the command of their superior officer was not a conspiracy such as acting in concert by their own agreement.

Mr. FESS. Just to recapitulate very briefly. Many questions that are in doubt must be adjusted later on. In the first place, just the force of the treaties now obtaining is not entirely clear, to say nothing about Germany's conduct toward us in the light of past treaties. What those treaties are—there were three of them, and whether one is a supplement of the other or one supersedes the other is not clear. Whether those parts in the treaties of 1785 and 1799 not included in that of 1828 are void it is not certain. That will have to be adjudicated later on. Secondly, just the effect of war upon treaties that were not made with specific reference to a state of war but to regulate commercial rights is the question that must be

adjudicated later on, and can not now be done. It is a question whether in the absence of provision otherwise a war does not abrogate treaty obligations. Another question is whether Germany has not by her conduct toward us repudiated the treaty obligations toward her. Still another question is whether these ships can be considered under such ownership or control of the German Government that they might be called public ships. We do not know, although strong evidence points that way. If they were, confiscation is clear. Another question is whether in the destruction of those vessels it was an act of the German Government because she feared they would be utilized in favor of her enemy. Later on that must be considered and can not be at this time adjudicated. There are so many questions that have come up that I am perfectly willing and shall freely vote to take these vessels, their title and possession, with the understanding that the Government is to operate or lease them or charter them and equip them, and then I hope that our Government, following the second section here, will proceed upon the basis that all rights of all people and of all citizens, of whatever nationality, will be regarded and respected, for our Government is too big to do anything else. [Applause.]

We have every reason, it seems to me, to employ our right in the premise. I feel quite certain the President has the authority to seize them without an act of Congress. However, I should prefer that our Government shall proceed upon the higher plane of public announcement that in our dealings even with an enemy and in time of war we will endeavor to secure every right to all citi-

zens, even though they are citizens of an enemy country.

Mr. GREENE of Massachusetts. Mr. Chairman, I yield eight minutes to the gentleman from Pennsylvania [Mr. McFadden].

Mr. MCFADDEN. Mr. Chairman, the gentleman from Wisconsin [Mr. Lenroot] and the gentleman from Ohio [Mr. Fess], who have preceded me, I think have both raised a very important, if not the most important, issue here in connection with this bill. That is the question as to whether or not by the action of the German Government in ordering the crippling of the machinery of these 91 boats in our ports the title to these vessels did not transfer to the German Government by this very act, and whether, if the German Government ordered the destruction of these boats, it might not be conclusive proof that the German Government itself did by this very action confiscate these boats from the private ownership. I really believe, then, that if they did that we are fully justified in confiscating these boats, as in so doing we would be taking the property of the German Government and not the property of private owners or individuals. If, on the other hand, the real ownership of these boats is not vested in the German Government, I am interested just to the extent to see that confiscation of private property is not had by this Government without some basis of settlement being provided for eventually. I do not say at this time, but eventually, but believe the law should be made very specific now; and in that connection I want to quote a statement which was made by the State Department, with the authority

of the President, on February 8, 1917, in which it stated:

> The Government of the United States will in no circumstances take advantage of a state of war to take possession of property to which international understandings and the recognized law of the land give it no just claim or title. It will scrupulously respect all private rights alike of its own citizens and the subjects of foreign States.

Then I also want to quote from the President's message to this Congress on April 2, in which he said this:

> Just because we fight without rancor and without selfish object, seeking nothing for ourselves but what we wish to share with all free peoples, we shall, I feel confident, conduct our operations as belligerents without passion and ourselves observe with proud punctilio the principles of right and of fair play we profess to be fighting for.
>
> It will be all the easier for us to conduct ourselves as belligerents in the high spirit of right and fairness because we act without animus.

This is a war measure and warranted by the exigencies of the case; but, however grave the situation, shipping that came to our ports in the legitimate prosecution of ocean traffic, the property of individuals and companies, should not be seized without rendering at the proper time just compensation therefor. The good name of our Republic demands that such a provision be incorporated in the bill.

This should not be left to the uncertainties of the future without a word indicating our disposition to treat the matter fairly.

* * * * *

I shall, therefore, vote for the passage of this bill, with the full anticipation that if the act of the German Government in the ordering of the crippling of these boats is regarded under international law as confiscation by the German Government of the property of their own citizens, namely, these seized boats, the United States is fully justified in confiscating them, and need not make any settlement therefor; but, on the other hand, if it is finally determined that these boats are the property of individual citizens of Germany, after the war is over that prompt and full settlement will be provided for to the individual citizen.

This will thus remove any argument which might be used by the Government of Germany in persuading their people to enmity against the United States by pointing to this ship seizure as an illegal act of international law. [Applause.]

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At page 1935:

Mr. BORLAND. Mr. Chairman, I move to strike out the last word. I did not have the opportunity to speak in general debate, or, at least, I surrendered the reservation of time that I had. I want to say that I trust there will be no demand to amend this bill in regard to the taking possession of the vessels. For my own part, I think that we could well provide in the bill for the payment of any possible interest that an American citizen has in the ships, and so provide at the time. But I want to clear up, if I may, in the mind of my friend from Wisconsin, who is unquestionably right on the broad principle of international law, the legal aspect of this situation in this act of

Congress. It would be utterly impossible for us to provide in this kind of a measure for the compensation to alien enemies. All we could do would be to announce a policy or make a recitation of future intention, which is sometimes a dangerous thing to do.

I take it that the gentleman from Wisconsin [Mr. Stafford] does not simply want that, but he will recognize instantly himself how impossible it is from a legal standpoint to safeguard the rights of an alien enemy. Assuming, as I know he does, that we have an indisputable right to seize these ships, and that it is our duty under the circumstances to do so, the question of the future compensation to a possible alien owner must be left to the future policy of the Government. It was provided in section 3 of the original bill that an American citizen should have the right of action against his own Government for compensation. That is a matter of grace, because under the general rule of law a sovereignty can not be sued without its own consent; but I have never seen a case where sovereignty submitted to be sued by a friend, even an alien friend. It is impossible to imagine a case where an alien enemy would have a right to go into the courts of the country during the continuance of a war.

Does the gentleman really expect that some provision might be made giving these alien enemies a legal right at this time? The entire provision will be a mere declaration of future intentions, which, as I say, would not only be futile, but in some cases dangerous.

Mr. STAFFORD. Is the gentleman aware that under existing statutes foreigners may present

claims against the Government in the Court of Claims if the same reciprocal rights are granted to citizens of our country in other countries?

Mr. BORLAND. I have no doubt there are such cases.

Mr. STAFFORD. It is the law; it is not a matter of cases.

Mr. GORDON. But there is no law authorizing an alien enemy to sue in the Court of Claims.

Mr. BORLAND. No; and there never was. I think the gentleman from Ohio is unquestionably right. These claims must be left to the adjudication of the peace commission upon the conclusion of peace, and it is impossible to exclude at that time the question of our reciprocal rights against the Government of that particular subject who claims that we have injured it. It may turn out that we shall insist upon Germany paying the claims of her own citizens. There have been three cases in this country where the United States has assumed as a matter of treaty the payment of spoliation claims to its own citizens. First, there was the French spoliation claims; second, the Spanish spoliation claims; and, third, the Mexican. It may easily happen, and I think will happen, that we shall insist upon Germany treating solely with her own citizens with regard to any spoliation claims.

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The Clerk concluded the reading of the joint resolution.

At page 1936:

Mr. ALEXANDER. Mr. Chairman, I move that the committee do now rise and report the joint reso-

lution to the House with the recommendation that the same do pass.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. Booher, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration Senate Joint Resolution 42 and had directed him to report the same back to the House without amendment and with the recommendation that the joint resolution do pass.

Mr. ALEXANDER. Mr. Speaker, I move the previous question on the joint resolution.

The previous question was ordered.

The joint resolution was ordered to be read the third time, was read the third time, and passed.

On motion of Mr. Alexander, a motion to reconsider the vote by which the joint resolution was passed was laid on the table.